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Introducing Direct Democracy in Canada

André Blais, Paul Howe and Richard Johnston
Editors' Note 2

Matthew Mendelsohn and Andrew Parkin
Introducing Direct Democracy in Canada

Introduction 3

Direct Democracy Around the World 8

Concerns about Direct Democracy and How to Regulate its Use 16

Recommendations and Conclusions 27

Donald E. Blake

The Perils of Comparisons: Addendum to "Electoral Democracy in the Provinces" 36

Editors' Note

The use of referendums to guide government policy has been an infrequent practice in this country. But changes in the political temperament of Canadians have created new pressures for public input and control over political decision-making. While views differ as to the root cause of the phenomenon, it is widely agreed that Canadians, over the long haul, have grown less deferential toward political authority, less mindful of tradition, less inclined to put their faith in the judgement of elected representatives. An appetite for direct democracy was evident in the spirited referendum campaign on the 1992 Charlottetown Accord, which saw a constitutional package widely supported by the political classes voted down by the Canadian people. Two galvanizing referendums on Quebec sovereignty, the second marked by a record voter turnout of 93.5 percent, have also demonstrated the receptiveness of Canadians to this decision-making tool.

Proponents of direct democracy — most notably the Reform Party and its successor, the Canadian Alliance — argue for extending the use of referendums to issues other than major constitutional change. The proposal was raised during last November's federal election campaign, but quickly became a target of derision. In this latest contribution to the *Strengthening Canadian Democracy* series, Matthew Mendelsohn and Andrew Parkin strike a more serious tone, offering a thoughtful consideration of the advantages and drawbacks of making referendums a staple of Canadian political life. Drawing on the practice of other countries, in particular Switzerland, Italy, the United States and Australia, they map out a range of referendum practices and measure these against multiple criteria of assessment — citizen empowerment along with other, less obvious governance objectives implicated in the adoption of direct democracy. Their analysis leads to several recommendations as to how referendums might be incorporated into Canadian practice without unduly undermining the existing strengths of our political system. Among their proposals is the adoption of the indirect citizen initiative, a form of direct democracy that retains an important role for parties and Parliament in the framing of referendum proposals and subsequent legislative enactments.

Clearly direct democracy could have profound implications across a number of important policy domains, among them other basic operating principles of Canadian politics. One example was presaged in an earlier *Choices* in this series, in which Louis Massicotte pointed to a national referendum as one way electoral reform might be achieved in this country. Massicotte, however, was doubtful about the prospects for success. Why, he rightly asked, would political leaders opposed to such a change allow the matter to be put to the people? But clearly the possibility of a citizen-initiated referendum would alter the dynamics markedly. It is evident that direct democracy is one of the more profound alterations that might be made to the operation of Canadian democracy, given its potential to beget further comprehensive change. In considering the full range of consequences attendant on their proposals, Mendelsohn and Parkin exemplify the type of careful approach needed in exploring this important terrain.

Note: We also include in this Choices issue a short addendum to Donald Blake's study "Electoral Democracy in the Provinces" (March 2001), which incorporates some updated information for the province of Nova Scotia.

Introducing Direct Democracy in Canada*

The 2000 federal election campaign in Canada featured a shallow debate on the merits of direct democracy. The Canadian Alliance suggested, somewhat timidly, that citizens should be allowed to initiate binding referendums on issues of their choice. Other political parties and the media generally derided this idea. Indeed, many commentators refused to engage in a debate on the merits of the citizen-initiated referendum, choosing instead to characterize it as nothing more than a device for attacking immigration levels or women's access to abortion services. When satirist Rick Mercer of the television program *This Hour Has 22 Minutes* launched his own "citizen initiated referendum" to change Alliance leader Stockwell Day's first name to Doris, the die was cast and the concept of direct democracy became an object of ridicule. As is often the case during election campaigns the issue did not get the kind of thoughtful consideration that it deserves. In this paper we would like to begin a more serious discussion of the question of whether, and how, direct democracy should be used in Canada.

Introduction

Referendums[1] are becoming more common in many liberal-democratic societies.[2] Over the past decade, Western Europeans have been called upon to vote with increasing regularity on a range of issues, including membership in the European Union and the ratification of its treaties, the devolution of powers to regional assemblies, changes to the electoral system, and the legalization of abortion and divorce. In Switzerland, Italy, and in the US – where citizens themselves are able to submit questions to the electorate and vote directly on laws – the number of questions that are being placed on the ballot has been increasing.[3] It is fair to say that where there is direct democracy it is being increasingly used, and where there is no direct democracy its introduction is being increasingly debated.[4]

Canadians are no strangers to the referendum. In addition to the 1898 vote on prohibition, there have been two national votes – on conscription in 1942 and on the Charlottetown Accord in 1992 – both of which were dramatic events in the political life of the country. Referendums at the provincial and territorial level have been more common: in the 1990s alone, there have been referendums in Quebec (in 1995, on sovereignty), in Newfoundland (in 1995 and 1997, on the constitutional protection of denominational schools), in Saskatchewan (in 1991, on public funding for abortion, balanced budget legislation, and mandatory referendums on constitutional amendments), in British Columbia (in 1991, on direct democracy), in the Northwest Territories (in 1992, on the division of the territory), and in Nunavut (in 1997, on the composition of the new legislature). These examples represent only a small fraction of the referendums held throughout Canadian history.[5]

In recent years, a case has been made for expanding the scope of direct democracy. At times, citizen groups on the left have called for issues such as free trade to be put to a vote, and have advocated the use of the referendum as one means of reinvigorating public life and civil society.[6] More famously, the more frequent use of referendums has been a rallying cry for populists on the right.

The Canadian Alliance has pledged to "allow Canadians to bring forward citizen-initiated referendums to put their priorities on the national agenda through a Canada-wide vote"[7] and to "seek the consensus of all Canadians through judicious use of national referenda, both on issues having significant implications for Canadian society and on proposed changes to the country's Constitution."[8]

During the recent federal election campaign, the Alliance's proposals were singled out for criticism by their opponents. Some worried that if relatively small numbers of citizens were allowed to initiate referendums, Canadians would find themselves dragged into repetitive votes on matters that were either frivolous or deeply divisive. Others argued that the wider use of referendums would be incompatible with Canada's system of representative and responsible government[9] — a system in which the executive is responsible to the legislature and sovereignty is vested in the Crown rather than "the people" — and as such would constitute an unwelcome "Americanization" of Canadian politics.[10]

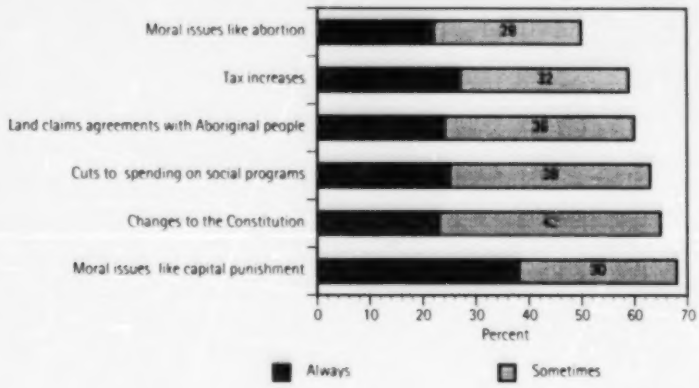
The discussion that took place during the campaign could hardly be characterized as an informed debate of the merits of introducing direct democracy in Canada. In part, this was due to the Alliance's own failure to articulate a credible and consistent position on how and when referendums might be used. In part this was because many of those who spoke out against the notion of citizen-initiated referendums were themselves not called upon to defend the status quo. It may have been easy to poke holes in the Alliance's policy; it would have been more difficult to defend the position that the Canadian parliamentary system currently provides for the adequate representation of citizens, affords elected representatives ample opportunities to debate the merits of government legislation, and affords the public the possibility of influencing government decisions.

What was also overlooked in the discussion was the fact that, generally speaking, Canadians appear to be cautiously supportive of the idea of allowing the public to play a more direct role in political decision-making. When asked directly in a survey conducted by the IRPP in March of 2000, "Overall do you think that referendums are good things, bad things, or don't you think they make much difference?," a majority (57 percent) said they were good things. Eight percent said they were bad things, and 28 percent felt they didn't make much difference. When asked in another survey a more general question about public involvement in decision-making — "If the general public was more involved in decision-making on our big national problems, do you think we would be more likely to solve our problems, less likely to solve our problems, or that it would make no difference?" — 47 percent of Canadians in provinces outside Quebec, and 61 percent of Quebecers, said "more likely." Only 19 percent of Canadians outside Quebec and seven percent of Quebecers said we would be less likely to solve our problems, while the remainder said it would make no difference or had no opinion.[11]

However, the support for direct democracy does not appear to be very deep: only 37 percent of Canadians on the IRPP survey said that they could think of an issue on which they would like a referendum held. And when asked whether referendums should always, sometimes, rarely or never be held on a selection of possible issues, most supported the use of referendums only "sometimes."[12] On none of the suggested issues did a majority of Canadians feel that referendums should always be held (see Figure 1).

Some provincial governments have already responded to what they perceive as a popular desire for reform. Both Alberta and British Columbia now require that an amendment to the Canadian constitution be approved by voters in a referendum before it can be passed by the provincial

Figure 1
On What Issues Should Referendums be Held?



Question Structure: "Do you think Canada should always, sometimes, rarely or never have referendums on...?"

Source: IRPP Strengthening Canadian Democracy Survey (March 2000). N=1278 (except "capital punishment" N=592; and "abortion" N=686).

legislature. BC and Saskatchewan have gone further by adopting laws enabling citizens to initiate referendums (or in the case of Saskatchewan, non-binding plebiscites) on any issue within the province's jurisdiction – although in neither province has a vote of this kind actually been held. The Action Démocratique du Québec has introduced a bill in the Quebec National Assembly that would permit citizens in that province to do the same. Manitoba has adopted a law mandating referendums in order to gain approval for measures such as tax increases,[11] and other provinces are considering similar legislation.

As a result of these changes and proposals, direct democracy has been gradually working its way into the mainstream of Canadian politics. Our concern, however, is that this has occurred in an ad hoc manner without adequate attention being paid to the question of what type of direct democracy is most appropriate for Canada, and when and how it should be deployed. The failure of political elites to consider and assess different modalities of direct democracy is likely to favour the advent of inappropriate types. "Inappropriate types" are those forms that are least consistent with the best values and traditions of Canadian democracy, and that could end up undermining some of its primary achievements.

The Criteria

In evaluating the referendum device, we will examine the claim put forward by the advocates of direct democracy. That is, do referendums provide greater scope for citizen participation in political decision-making and shift power from elites to the general public? Our own criteria, however, will not simply mirror the ones set out by the advocates of direct democracy. We will also examine the effect that referendums are likely to have on some of the most valuable features of Canadian liberal democracy. In our view, these include:

- the protection of minority interests, so that majority rule does not become majority tyranny;
- the fairness of the political process, so that all citizens have a reasonable opportunity to raise their concerns and to influence the views of others;
- informed decision-making, so that citizens have access to the information they need to be able to make choices that are in their best interest; and
- political accountability, so that voters can hold someone to account for the consequences of public policy decisions.

The protection of minorities, fairness, the quality of decision-making and accountability are therefore crucial litmus tests against which referendum practice must be evaluated, along with the question of whether the use of referendums actually increases the power of the general public. Thus, in reviewing the experience of other coun-

tries, our goal will be to identify those particular forms of direct democracy that can best meet the goals of referendum proponents, while still preserving the best elements of the Canadian liberal-democratic tradition.

With these criteria in mind, we will highlight four important ways in which referendum processes may differ. First, referendums and their outcomes can be more or less majoritarian — that is, they differ in the degree to which they allow for "winner-take-all" scenarios. Conversely, they can incorporate integrative practices, designed to promote compromises between different interests and provide some protection for the interests of minority communities. Referendums are sometimes thought to be intrinsically majoritarian devices that undermine compromise and fail to integrate the viewpoints of competing groups. If this is indeed the case, it would be a highly damning criticism in a country as diverse as Canada.

Second, referendum processes can be more or less deliberative — that is, they differ in the extent to which they promote thoughtful public debate. Deliberative referendum campaigns allow citizens to develop their opinions through participation in collective public dialogue; at the other end of the spectrum are referendums that tabulate the standing opinions of citizens on the issue at hand. Democracy is as much about public discourse as it is about voting, and only after a process of debate, in which the positions of all sides can be tested within the public sphere, will the wisest choices be made. What interests us is the extent to which such a process can be made part of a referendum campaign.

Third, referendums can be more or less controlled by political elites. The process can be regulated so as to give the lead role to established political parties and to restrict the ability of others to set the agenda or influence the outcome. Or a framework can be established that provides for a much larger role for interest groups, social movements, and individual citizens. Who can initiate referendums and under what rules will be an important determinant of their efficacy in empowering citizens.

Finally, referendums can be used to accomplish more or less sincere objectives. Theoretically, the intent of a referendum is to solicit the public's views on a given issue. In practice, referendums are typically deployed strategically by elites who are interested not so much in knowing the public's mind as in achieving more self-interested objectives — such as bringing about a particular result or maintaining the unity of their party in the face of a divisive issue. The timing of a referendum, the wording of the question, and the rules of the campaign are generally set with such strategic objectives in mind. There is of course no way to prevent governments from using referendums to further their strategic ends and tactical goals will be part of any process. Yet some referendum regimes encourage the tactical use of referendums, while others promote referendums designed to solicit feedback from the population on the direction of policy. The crudely tactical use of referendums is, in fact, part of the reason why proponents of direct democracy are often disappointed with the actual practice of referendums.

These four criteria allow us to distinguish between different referendum practices on the basis of important principles of liberal democracy and Canadian democratic practice. First, there must be a reasonable expectation that the referendum regime will promote integration and avoid creating unnecessary divisions between the country's diverse communities — linguistic, regional and cultural. Second, Canadian democracy is about more than simply voting. It is also about talking. Ideally, voting is but the final stage of a larger process of discussion among citizens, a process through which citizens learn about one another, debate public issues, and ultimately develop public judgement that is reflective of collective needs and

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values. Third, referendum procedures must be evaluated on the basis of whether they ensure an appropriate mix of party, interest group, and citizen participation in the process. Too little participation by political parties can undermine the coherence of the process and the accountability of government, while too much control by established elites defeats the very purpose of introducing referendums. Finally, a tool like the referendum must be evaluated not simply on the basis of whether it allows citizens to vote more frequently on a wider range of issues, but on whether it is used sincerely — that is, with the genuine intention of extending citizens' control over government and their influence on policy issues of their own choosing.

Overview of Our Argument

The paper is structured as follows. We begin by reviewing a range of referendum models that are currently in use in various liberal-democratic societies. In the next section, we assess these models in light of a number of specific issues that are often raised in discussing referendums — issues such as the rules governing campaigns, the ability of voters to make good decisions, and the effect of referendums on key institutions and actors. On this basis, we turn in the final section to a discussion of the best forms of direct democracy for Canada.

In general, we conclude that many of the hopes of the proponents of direct democracy — notably that the process is one that allows "the people" to bypass elites in order to enact policies with widespread public support — are misplaced. Referendum contests are often disputes between competing narrow interests or competing groups of elites, with the battlefield merely having shifted from the floor of the legislature to the ballot box. The timing of a referendum, the wording of the question, the terms and tone of the campaign, and even the interpretation of the result all tend to be determined by elites.[14] Referendums often have little to do with grassroots democracy.

Referendums also do not usually provide the public with an opportunity to make policy, although they often provide a way to veto proposals made by political elites. The referendum on the Charlottetown Accord is a good example. While the referendum allowed the public to defeat the accord, it provided no mechanism though which the public could set the constitutional agenda or suggest alternatives. In and of itself, therefore, the use of referendums will not make a political system more democratic. Moreover, there is a risk that referendums can actually damage the integrity and effectiveness of the democratic system, depending on how they are integrated into existing structures. That said, their wider use, under the right conditions and governed by the right rules, can serve to improve the quality of Canadian democracy and make government decisions more responsive to public concerns. Moreover, we believe their expanded use to be inevitable and it is therefore essential to think through how they can be most effectively and democratically used. Our objective is to identify those circumstances and models of referendum practice that preserve the best elements of Canadian liberal democracy while at the same time revitalizing it. Accordingly, we put forward three key recommendations:

- Referendums should generally be used to ratify constitutional amendments, but such referendums should be used only following a people's convention on the issue;
- Governments should initiate referendums more frequently, but these are best used in cases when the government is genuinely uncertain about the direction to take, and perhaps even prepared to remain neutral during the campaign;
- The "indirect" form of the citizen-initiated referendum should be adopted. Unlike the direct initiative, which allows citizens to place questions directly on the ballot, a

successful petition drive under the indirect initiative requires governments to introduce the measure into the legislature and hold hearings on the question, and permits amendments to the proposal before it goes to the electorate.

Direct Democracy Around the World

Direct democracy exists in many forms. In this section, we review some of its most instructive variants, in order to sketch out an array of options from which Canadians might choose. We will describe how direct democracy is used in each case, as well as comment upon its majoritarian as opposed to integrative qualities, its deliberative nature, the degree to which it is controlled by political elites as opposed to political outsiders, and the sincerity of its use.

There are three general classes of referendums: those initiated by the government at its own discretion, those referendums which must be held by law, and those initiated by the population through the collection of signatures (see Figure 2). Government-initiated referendums, used at the discretion of the government, have been held in most liberal democracies, although in many countries, including Canada, their use has been sporadic. Obligatory referendums are held where a government is required by law or custom to submit certain kinds of legislation to a popular vote. Australia and Ireland, among other countries, require that referendums be held in order to ratify constitutional amendments. Increasingly there are also calls to oblige governments to submit non-constitutional issues to a referendum, such as tax increases or the incurring of a budgetary deficit. The citizen-initiated referendum is prevalent in many US states, Switzerland, Italy, and New Zealand, though there are important variations in the form it takes in each jurisdiction. We will highlight three distinct types: the direct, the indirect, and the abrogative initiatives. We will also review in more detail the Swiss case that combines various forms and merits separate attention.

Figure 2
Types of Referendum

1. Government-initiated referendums
2. Obligatory referendums
   - Obligatory constitutional referendums
   - Other obligatory referendums (non-constitutional)
3. Citizen-initiated referendums ("the initiative")
   - Direct initiative
   - Indirect initiative
   - Abrogative initiative

The Citizen-Initiated Referendum ("The Initiative")

The United States

There is no single American model of direct democracy.[15] There has never been a national referendum, constitutional amendments are not submitted to referendums, there is no provision for the initiative at the national level, and each state has its own unique arrangement (currently 24 states allow for some form of citizen-initiated referendum).[16] We will single out for attention two states with contrasting systems of direct democracy: California, where the use of the direct form of the initiative has attracted world-wide attention, and Massachusetts, which allows for an indirect form of the initiative. The one element that is common to all jurisdictions across the US is the application of a series of court decisions (with *Buckley v. Valeo* [1976] being the most sweeping) that have struck down attempts to limit campaign spending on the grounds that such limits constitute an unwarranted restriction of free speech. Unrestricted campaign spending makes the US experience very different from anything that

would ever materialize in Canada. Unrestricted spending also makes it difficult for observers of American politics to distinguish the effects of the initiative from the effects of the initiative in a context where there are no limits on spending. Because of this, it is important to be cautious in the conclusions we draw from the American experience and to look carefully at the initiative in countries other than the US.

The Direct Initiative (California)

Under the terms of the direct initiative – which is permitted in 18 states – voters who gather enough approving signatures from fellow voters within a given period of time are able to place a measure before the electorate in a referendum (the number of signatures and the time for collecting them vary from state to state). If the measure passes, it becomes law.

The California variant promotes a mix of sincere and strategic practices. On the one hand, it is genuinely open – any group can launch a petition drive on any issue of its choice and succeed in putting it to a vote. The process is legally structured so as to allow for any type of initiative and political outsiders of various stripes have successfully changed legislation. Different political eras have tended to produce different types of initiative outcomes. Progressive measures were common in the 1920s, while more recently, conservatives have prevailed on "law and order" and taxation issues, and progressives have come out on top on environmental and consumer rights issues. On the other hand, the process is not necessarily fair to all participants. One generally needs access to a large pool of financial resources in order to be competitive in an initiative campaign. Consequently, such campaigns are often launched for insincere reasons, such as sapping opponents' resources or forcing the legislature to act to avoid becoming embroiled in a messy initiative campaign.[17] In such instances, the initiative is no more than a strategic weapon deployed by those with deep pockets.

The California initiative regime is not designed to promote deliberation. There are no formal mechanisms to ensure that voters have adequate opportunities to learn about the proposed measures. The state does mail out a voters pamphlet (which few voters read) that summarizes the measures and arguments for and against, but beyond this, voters are offered little help in their deliberations. There are, for example, no state-sponsored public debates. Likewise, there is no system requiring different intervenors to register with "yes" or "no" committees in order to make the process more transparent, and there is no easy way for the average voter to track the sources of campaign funding. As it is, the debate largely takes place on television, in the form of 30-second commercials. Moreover, many measures often appear simultaneously on a single ballot, limiting the amount of time that voters can devote to a consideration of each. Because of this, many voters do not bother to participate, and those that do tend to give perfunctory consideration to the issues.

The majoritarian flavor of the Californian initiative stems from the fact that there is no formal mechanism to guarantee minority interests a say in the outcome of the vote. There is, for instance, no requirement that a measure gain approval in a minimum number of regions or electoral districts. Nor is there a process that would allow groups other than those who sponsor an initiative to have a say in the question wording. While majority opinion is one important consideration in democratic decision-making, the absence of any protection for minority interests – as opposed to minority rights, which are enforced by the courts – is a concern because some minorities may consistently find themselves on the losing side of important initiative campaigns. Moreover, the low turnout in most initiative votes means that when the "majority" prevails, it is often

quite a narrow coalition of groups that has come together to advance their own interests, not a true majority of the voting population.

Finally, the California initiative process is not controlled by the established political parties. Interest groups with either large memberships or significant financial resources can launch petition drives, as can less stable and more diverse coalitions of smaller or less well-off groups that come together to pool their resources. Increasingly, wealthy individuals or industry associations can single-handedly succeed in having questions placed on the ballot. In short, the principal players in Californian politics are not the elected state representatives but loosely knit coalitions of advocacy groups, professional and industry associations, wealthy private citizens and professional political consultants.[18] Party leaders do sometimes play a role in the initiative campaigns themselves – they are often key spokespersons for one side or another and often sponsor petition drives – but the impetus for political change now usually emerges from outside the parties. However, this does not mean that power has been transferred to what would be generally understood as "the public"; rather, it has been transferred to a different group of political insiders with financial resources.

One final issue deserves mention. Amending legislation that has been passed via the initiative process is impossible without another initiative. This is problematic because in practice most legislation requires amendment, not to undermine its objectives but to better achieve them. One can never be certain of the precise effects of a law until it is implemented. Circumstances may change so as to require new legislation, but each law passed through the initiative remains on the books until it is rescinded through the initiative. And some laws are written so as to prohibit amendment unless the change is approved by a super-majority. These qualities serve to "constitutionalize" an increasing proportion of the state's legislation, as laws passed via the initiative are placed beyond the reach of the legislature acting on its own. As these laws are layered one on top of the other, a system is created that is increasingly incoherent, that fails to meet its intended objectives, and that cannot respond to new situations, or, ironically, new public demands. The Californian case, though, is at one end of the spectrum of initiative politics and, as we will see below, there are a variety of regulations that can be incorporated into the referendum regime to prevent many of the worst excesses seen in that state.

The Indirect Initiative (Massachusetts)

The indirect initiative is the form adopted in many of the northern US states, such as Maine, Michigan and Massachusetts. It differs from the direct initiative in that the satisfaction of the petition signature requirement does not mean that the question is placed directly on the ballot for a vote. Rather, the question goes first to the state legislature where it is submitted to a public legislative hearing. Several outcomes are then possible: the legislature may place the question on the ballot, with or without amendments; it may submit its own proposal along with the original one (allowing voters to choose between them or vote for neither); or it may pre-empt a referendum by enacting legislation that responds to the general spirit of the original proposal.

The indirect initiative process is more deliberative than the direct in that it explicitly provides for public dialogue in the form of legislative committee hearings. The hearing process allows the public to offer more than a "yes" or "no" final verdict, and provides a process whereby the strengths and weaknesses of the proposal can be assessed and improvements considered. It is also more integrative than the direct initiative. Although the majority still rules once the measure is submitted to a referendum, at the earlier stage it is possible

to amend it so as to incorporate the concerns of minority groups. The process is more controlled by political parties because they play a key role in the legislature in organizing the debate and shaping the choices that voters are called upon to make, though interest groups and other coalitions can still force issues onto the agenda. In this way, the indirect initiative allows outsiders to force issues onto the agenda and lets voters pronounce on issues, but the important features of accountable and representative government are preserved.

The indirect initiative thus has several advantages over the direct initiative: it allows the legislature to develop counter-proposals that integrate concerns from groups other than those sponsoring the initiative; the legislature is able to respond quickly to changed circumstance or unforeseen consequences by amending legislation passed through the initiative; and it encourages political parties to play a prominent role in the process. These factors help avoid "majority tyranny" and promote greater deliberation and a form of debate that is more organized and therefore more accessible to voters — producing more considered decisions on their part. The key disadvantage of the indirect initiative is that it does not guarantee that voters can force a vote on an issue of their choosing in exactly the way they want. If voters regularly see their proposals blocked or changed beyond recognition by the legislature, their confidence in the process may erode.

An alternative indirect initiative process takes place in New Zealand. There, citizens gather signatures for a referendum question, but no legal text accompanies the proposal. If the initiative is eventually passed in a referendum, the issue is then turned over to the legislature (and therefore the public service) to turn the general statement of intent into actual legislation. At that point, the ordinary legislative process begins, and the final legislation may end up incorporating the views of groups other than the original proponents.

The Abrogative Initiative: Italy

The abrogative initiative — referred to in Italy as the *referendum abrogativo* — provides voters with an opportunity to overturn legislation that has been passed by parliament. In order to initiate the process, 500,000 signatures must be collected within a period of 90 days. Then the Constitutional Court must decide whether the question is eligible to be put to a popular vote (some laws, such as international treaties or budget measures, cannot). In order for the initiative to pass and overturn the existing law, at least 50 percent of eligible voters must turn out to vote. Governments can pre-empt the initiative by adopting a revised law in place of the one in question, and even a referendum win can be tentative because governments have sometimes replaced the defeated law with a similar measure.[15]

As used in Italy, the abrogative initiative allows voters to make good on one of the traditional promises of the direct democracy: when political elites conspire to suppress widely held views of the general public, the public can rise up and say "no". This power can be most effectively exercised when parties and elites seek to protect their own interests at the expense of what voters see as the public interest. For example, the abrogative initiative was used to bring about change to the electoral system over the objections of the major parties in Parliament.

In practice, the abrogative initiative is not merely a public veto. Those considering initiating a popular vote often make known what amendments could be made to the existing law that would be sufficient to cause them to abandon the petition drive. This initiates a dialogue with government officials and provides those outside of government (including smaller political parties as well as citizens' groups) with a voice in shaping legislation. Its effect in practice is to distribute political power more widely throughout the political system.

In Italy, the abrogative initiative has been used by both the Radical Party on the left and a variety

of Catholic groups on the right. Catholic groups mobilized large numbers of voters in their 1974 attempt to repeal the law legalizing divorce and in their 1981 attempt to repeal the law liberalizing access to abortion, but failed on both occasions. The Radical Party has sponsored a large number of abrogative initiatives; while many of these have been defeated, they nonetheless have prodded the political system to move more quickly in adopting a variety of progressive measures, most notably a law liberalizing access to abortion. Nevertheless, it is true that under the terms of the abrogative initiative, the power of the government remains formidable. Governments have been able to use their discretion to pass laws that respond to no more than the spirit rather than the details of a proposal, and governments have also been known to dissolve parliament in order to avoid a referendum altogether.

The abrogative initiative thus does not shift power decisively away from governments in favour of other parties and groups, but instead promotes dialogue among a variety of political actors aimed at developing compromise solutions. This makes this form of referendum much less majoritarian and more deliberative than the direct initiatives of some American states. The danger with both the indirect initiative and the abrogative initiative, however, is that in favouring compromises negotiated by the leaders of parties and citizen groups, the referendum process may lose a great deal of its appeal – the possibility of producing a decisive outcome that political elites are required to obey.

Switzerland

The overwhelming majority of all national referendums held over the past fifty years have taken place in Switzerland. There are five different forms of the referendum in Switzerland at the national level, with the three most commonly used being the obligatory constitutional referendum, the abrogative initiative, and the citizen-initiated constitutional referendum. We will focus on the latter, although the abrogative initiative is also crucial to the workings of Swiss direct democracy. Referendums are a regular feature of Swiss politics and they are tightly interwoven into the general process of government.

In Switzerland, the collection of 100,000 petition signatures is needed to launch a campaign to change a provision of the constitution. Because the constitution contains so many provisions, issues which might elsewhere be considered "ordinary legislation" end up being contested in the constitutional arena of initiative politics. Once the necessary signatures are collected, the measure is tabled for discussion in parliament. The government can then choose from a number of options: it can let the question be put to voters in a referendum, it can submit an alternative proposal to the voters alongside the one put forward by the petition's sponsors, or it can enact a legislative measure deemed satisfactory by the petition's sponsors. The success rate for initiatives is low, with only 10 percent that make it to a vote eventually winning approval in a referendum.[20] The approval rate for government counter-measures is higher. In approximately one-quarter of all cases, the original proposal is withdrawn by its sponsors after negotiations with the government produce an acceptable legislative response, leading many observers to describe this initiative process as "indirect."[21]

It has been argued that even though most initiatives are defeated, at the heart of most new legislation in Switzerland is an initiative drive. Some have referred to Switzerland as a case of "negotiated" direct democracy because the referendum is part of the ongoing bargaining that takes place within government.[22] Many initiatives are launched by small groups, but before coming to a vote, these minority views are transformed through consultation into proposals that are acceptable to the majority.

The Swiss initiative process can be characterized as both deliberative and integrative because it incorporates the practice of negotiation and compromise among political actors — actors that include representatives from both the canton and federal levels of government, political parties, interest groups, and citizen movements. In this sense, the initiative is part and parcel of the larger Swiss tradition of "amicable agreement"[23] in which political rivals cooperate with one another in order to get things done. Legislation in Switzerland is made the subject of an elaborate process of consultation before it is passed by parliament. This process — known as *Vernehmlassung* — serves to "referendum-proof" a considerable amount of legislation and make subsequent initiative challenges less necessary. Even when an initiative campaign is launched, it often serves as a means of extending the process of consultation rather than forcing a "yes or no" majority vote.

The non-majoritarian nature of the Swiss initiative also derives from the fact that measures must receive the support of a "double majority" in order to pass — a majority of all voters, as well as a majority of voters in a majority of the individual cantons. As a result, a regionally concentrated majority cannot pass measures without the support of voters in a significant number of other cantons. Furthermore, in order to get an abrogative initiative on the ballot in Switzerland, one requires either the collection within three months of 50,000 signatures from voters, or a vote of eight of the 26 canton legislatures. This second provision, that less than one-third of the canton legislatures can force a national vote on a piece of federal legislation, highlights the non-majoritarian and federal nature of Swiss direct democracy. Its effect is to encourage extensive discussion and negotiation with the canton governments before the federal government proceeds to enact contentious legislation.

The initiative process in Switzerland is sincere in that its main purpose is generally to obtain the views of voters rather than to accomplish ulterior objectives. It is open for use by anyone and even small citizen groups have been successful in placing issues on the ballot and at using the threat of the initiative to spur the government into action. Political parties in Switzerland have more control over the process than do politicians in the direct initiative states of the US by virtue of the parliamentary hearings and subsequent negotiations with initiative sponsors. Swiss politicians play a central role in helping to "broker" the outcomes of initiative campaigns, thus exerting some control over the process, but control that is clearly shared with a wide range of political actors.

The Obligatory Constitutional Referendum: Australia

We move now to consider referendums that are required under the terms of the constitution. This is a familiar issue for Canadians, and because many of our institutions and traditions are strikingly similar to those of Australia, it is instructive to examine its process of constitutional amendment.

The case for using a referendum to ratify constitutional amendments is an easy one to make. The idea of popular sovereignty that underpins much of the discourse of democracy implies that citizens collectively remain the ultimate authority in a democratic society and by virtue of this must be consulted directly whenever the terms under which they have consented to be governed are changed. More pragmatically, it can be argued that because the constitution structures the political system and influences the outcomes of future decisions, any changes to it should be subject to a more rigorous process of ratification than is the case with ordinary legislation.

In Australia, a proposed amendment to the constitution must be passed by referendum. It must receive over half of the votes cast across the country, along with a majority of the votes cast in at least four of six states. By virtue of this double-

majority requirement – which in practice means that the three smallest states can veto an amendment – referendums in Australia are non-majoritarian in that "majority rule" is qualified by the federal principle.

At first blush, the referendum process in Australia appears to be fairly deliberative. Parties are involved in the campaigns, issues tend to be of high importance, votes are not held during regular elections, and, because only one or two amendments are usually considered at the same time, each one usually attracts considerable voter attention. However, because the process has tended to be highly controlled by established political parties – with the government proposing constitutional amendments and the government and opposition parties acting as the main antagonists in the ensuing campaign – it has been highly partisan and governed by strategic considerations. Governing parties initiate referendums for tactical purposes, and opposition parties oppose them for the same reason. In the end, many voters simply vote according to their partisan loyalties, undermining the deliberative nature of the process. Because of the strategic and insincere nature of many referendums – with the device used to pursue partisan objectives rather than build national consensus around key issues – the process has not proven to be very integrative.

In practice, referendums on constitutional amendments in Australia have proven very difficult to pass – in fact, the overwhelming majority (36 of 44) of proposed amendments have failed.[24] This has led some to conclude that referendums on constitutional amendment are problematic in and of themselves – that allowing the people a direct vote on constitutional changes adds an inordinate level of complexity to the process which only serves to ensure that the constitution will ossify in the face of successive referendum defeats. We doubt, however, that such conclusions are warranted. It is true that many voters are cautious by instinct and tend to vote to preserve the status quo unless a strong case can be made for change. However, many of the proposed amendments that have been defeated in Australia were proposed by a Labor government interested in transferring powers away from the states and into the hands of the Commonwealth government. This shift in the division of powers was opposed by the opposition parties and much of the public. One can argue, then, that in these cases the referendum served exactly the purpose for which it was intended: it allowed the citizenry to block a proposed change to the fundamental law of the land which was seen as advancing the partisan interest of the governing party.

In the 1999 referendum on the proposal for an Australian head of state, a people's convention was held prior to the referendum. The purpose of the convention was, in part, to generate more discussion and deliberation among the general public prior to the vote being held, but was also designed to limit the partisanship that had undermined previous campaigns. By moving the process of initiating the referendum and formulating the question out of the hands of parties, it thus constituted an "ambitious attempt at taking normal politics and partisanship out of referendums."[25]

The relevance of the Australian experience for Canada seems clear. Unless there is a popular consensus on the need for and nature of constitutional change, amendment will be difficult, regardless of whether a referendum or some other process is used. Canada has always had great difficulty achieving successful multilateral constitutional change to the satisfaction of all major partners in confederation. Multilateral constitutional amendment is inherently difficult because the consent of almost every provincial government must be secured in order to proceed. We will return to this theme later in our recommendations, but it should be underlined that the difficulty of securing constitutional amendments lies with the pol-

itics of constitutional change in complex societies, not the use of the referendum device itself. In Canada, constitutional change is going to be difficult regardless of the process used.

Government-initiated Referendums

Government-initiated referendums are increasingly common and increasingly called for by the public. Since such referendums are not obligatory, governments can hold them or refrain from holding them as they see fit. The reasons why a government might opt to call a referendum are varied and include the desire to: add legitimacy to a policy through public ratification; free itself from having to take a stand on a controversial issue; strategically manage division within its own party; or respond to public demands for a referendum. The government may also feel that it has no choice but to call a referendum because precedents or conventions exist which make its use virtually mandatory. The bottom line, however, is that governments are unlikely to choose to call a referendum unless it is to their advantage. Even when the public calls for a popular vote on an issue, the government usually only accedes when it perceives that it is in its interest to do so. That government-initiated referendums are often used for strategic reasons undermines their effectiveness as a tool of public participation.

There is often no principled reason why governments choose to turn some issues to the people, and not others. The United Kingdom held no vote when it joined the European Economic Community in 1973, confirmed its membership by referendum in 1975, but (unlike France, Denmark and Ireland) did not hold a referendum in 1992 when it ratified the Maastricht Treaty. What differed in each case was not the nature of the decision but the strategic calculations of the country's political leaders — calculations regarding their standing with the electorate and the management of dissent within their own party.

Government discretion over whether to hold a referendum raises serious questions about the sincerity of the process. The more a referendum becomes a device deployed for partisan purposes, the more the process is likely to constrict opportunities for a genuinely open and inclusive public debate. Moreover, governments are likely to avoid calling a vote precisely when one might be most warranted — for instance, in the face of a particularly controversial policy decision that had not been widely discussed during the previous election campaign. Government-initiated referendums are often used to reinforce the position of the major political parties in the legislature. For example, Quebec legislation on referendums on sovereignty makes the premier and the leader of the opposition the leaders of the two opposing coalitions. These referendums are often highly deliberative, but debate tends to be controlled by established political parties and is not very open to political outsiders.

In sum, in the case of government-initiated referendums, the determining factor in the decision to put a question to the people is mainly political expediency. Because of this, the use of direct democracy can end up exacerbating, rather than alleviating, public disaffection with the political process. While there is often public support for the use of a government-sponsored referendum — for example, almost all Quebecers recognize that a referendum is the only legitimate way to begin a process leading toward secession — the public can also become disenchanted with the strategic use of the referendum device, deployed only when the government believes it has a good chance of winning.

On the other hand, there are instances when the government is not heavily attached to one outcome over the other and is sincerely prepared to let the public have a say. In Ireland, for example, the government turned to the electorate in 1984 to decide whether British citizens should have a right to vote in Irish elections and in 1972 to decide

whether the voting age should be lowered from 21 to 18. Such genuine consultative actions, in which the government does not become the chief proponent of one side or the other, can, as we will discuss in the final section, contribute to the health of democracy. But too often the population is only brought in at the end of a process to endorse or reject a government proposal, with the government using all of the resources of the state to cajole the population into acquiescence. It is not altogether surprising that such referendums often leave a bitter aftertaste. However, a decision early in the policy process to allow the public a greater say on an issue the government does not feel strongly about, with the governing party remaining neutral, has in other countries produced more edifying democratic effects.

Concerns about Direct Democracy and How to Regulate its Use

Each of the referendum models we outlined above functions quite differently depending on the rules governing its use. In this section, we examine how the regulatory regime under which a referendum is conducted helps to determine the effects of the process on the quality of liberal-democratic politics. In doing so, we will review some of the main objections to direct democracy: that direct democracy weakens political parties and accountability, places unrealistic demands on voters, jeopardizes the rights of minorities, and unduly favours well-financed interests.

Do Referendums Weaken Political Parties and Undermine Accountability?

It is often argued — by both advocates and critics of direct democracy — that one effect of the use of referendums is to weaken political parties. The argument in brief is that parties become less relevant once the power to initiate, draft and pass legislation is turned over to the electorate. Parties play a lesser role in determining the public policy agenda and in organizing and defining the terms of political debate. The stronger the regime of direct democracy, the more likely it is that those seeking to influence public policy will put their time and money into the referendum rather than the electoral process.

We take any potential threat to parties seriously; we consider parties essential to the smooth functioning of a democratic system. In a liberal democracy, voters must be able to hold someone to account for the consequences of public policy decisions. Voters also must perceive that they are presented with meaningful choices during elections. In our view, this means that political parties must continue to play the leading role in the political process. By developing policy platforms and selecting slates of candidates for political office, parties effectively present voters with alternatives from which to choose. While a system of direct democracy that permits other actors to break the oligopoly of the major political parties would be a positive development, one that did permanent damage to parties' long-term viability would not. But the evidence from other jurisdictions shows that while the referendum may force parties to change and may help new parties grow (both of which can help revitalize democracy and parties themselves) it does not lead to their demise.[25]

In the case of government-initiated referendums, parties clearly play a key role both in determining when a vote will be held and on what question, and in organizing the debate — either by leading the "yes" and "no" sides or by taking positions which serve to guide voters. In those cases where ad hoc organizations play an important role in the campaign, these organizations are often led and staffed by party activists. Even the citizens' initiative, which is cast as the biggest enemy of par-

ties, can be used to their advantage by invigorating their role in policy innovation. More specifically, by sponsoring or supporting initiatives, parties can succeed in recruiting new supporters and in shifting political debate to a ground more favourable to their own electoral success. The Radical Party in Italy has been particularly successful at sponsoring referendums that furthered its own agenda, and party leaders in the US states often lead initiative campaigns designed to force issues onto the agenda that bring their own supporters out to the polls during the simultaneous elections.[27] Referendums and initiatives may curtail the ability of political parties to unilaterally set the legislative agenda, but they do not create a process that is beyond the reach of parties.

Referendums can strengthen parties in other ways as well. For instance, they can be used by political leaders to manage conflict within their own parties or governing coalitions. Instead of taking a stand on a key issue that divides party supporters, party leaders can adopt a more neutral stance and choose to have the issue decided directly by the voters. Such a strategy has been employed many times in Europe — the 1975 UK referendum on the European Community, for instance, allowed dissenters within the governing Labour party to campaign against the country's membership in the organization without placing the government's hold on office at risk. Similarly, referendums allow parties to remove a divisive issue from the realm of electoral politics. In Quebec, for example, the Parti Québécois was able to win power in 1976 only after promising that it would not pursue its goal of sovereignty-association without first gaining support for the proposal in a referendum. This strategy effectively decoupled the issue of secession from other election issues and allowed the party to become a stronger electoral force. Referendums also provide opportunities for small parties: by taking a position in a referendum campaign, they can potentially attract more publicity and gain credibility. This is especially likely to occur if the major parties are aligned on one side of the referendum question. For example, the Charlottetown referendum provided the nascent Reform Party with an opportunity to gain national prominence.

Some worry that the referendum threatens governmental accountability, but again, this concern is overstated. In the case of government-initiated or obligatory constitutional referendums, governments clearly remain accountable to the electorate for the decision to use the referendum device itself (or to initiate the process of constitutional change). And all parties remain accountable to the electorate for their conduct in the referendum campaign. With the abrogative initiative, governmental accountability is in fact accentuated. Under normal rules of accountability, governing parties can only be held responsible for their governing record during periodic election campaigns — campaigns that inevitably focus on many issues. With the abrogative initiative, other actors can force governments to take more immediate responsibility for their policies and defend them before the electorate.

On the other hand, a plausible argument can be made that the direct initiative diminishes accountability. The Californian case raises the most concerns: there, the accumulation of laws passed through the initiative effectively curtails government choice. Governments are required by the virtue of initiative outcomes to allocate spending to a variety of specific purposes, and as a result they have very little discretion left in budgeting or establishing priorities. As Peter Schrag has persuasively argued, the limits placed on property taxes by Proposition 13 in California mean that "regardless of the demand for public services [and regardless of public opinion on the question]...budgets are [usually] balanced with spending reductions, not revenue increases," with programs enjoying popular support being cut

because of the restrictions that have been placed *on the state's ability to raise revenue.*[28] When the proliferation of initiative outcomes serves to paralyze the hand of government, the ability of voters to effectively hold public officials to account for public policy is undermined.

However, even in the case of the direct initiative, one can design processes to preserve some measure of accountability. Some states have "sunset" provisions that allow the legislature to amend laws passed by initiative after three to five years. Other states put restrictions on what issues can go to the ballot, with many excluding initiatives on spending measures. This guarantees that the legislature still has control over the budget process – a key element of an accountable government. Thus, while the risks to accountability are much higher with the direct initiative than with other forms of referendum, even here rules can be put in place to prevent the worst excesses that characterize the California system.

Can Voters Make Sensible Decisions?

One major objection to the use of the referendum is that voters are not up to the task of making sensible decisions on policy issues. Some suggest that voters quite simply are not knowledgeable enough or are too busy to think about policy issues in detail. In our view, this is a legitimate concern and to raise the issue is not evidence of an anti-democratic bias. The demands of decision-making in a complex society may indeed be too high for those who do not have time to immerse themselves in policy on an ongoing basis. This criticism must be adequately addressed before one can responsibly endorse the wider use of referendums.

All of the available evidence suggests that voters make "reasonable" decisions during referendum campaigns, that is, decisions that – as far as possible given the range of options presented to them – are consistent with their underlying preferences, values, and interests. This does not mean that all voters know all the details about the issues in front of them. Instead, most voters rely on a variety of short-cuts when casting their vote, taking into account:

- the positions of party leaders and interest groups whom they trust;
- the current economic situation, resisting change during poor economic times, particularly if it involves new spending;
- the motivations of the individual or group who sponsored the measure;
- their general ideological or value orientation;
- their own self-interest; and
- their degree of uncertainty about the issue at hand, tending to vote "no" when unsure.[29]

Taken together, these short-cuts enable voters to take decisions that are generally sensible, in that they are consistent with their underlying preferences and values.

This of course does not mean that the decisions made directly by voters will be the "right" or "best" ones, judged by whatever academic standard one cares to employ. But neither will be those taken by governments. It is no more legitimate to condemn referendums because voters might make the "wrong" choice than it is to condemn elections because voters might elect the "wrong" party. What we can ask is whether or not voters are able to make decisions that accurately reflect their general values, or whether on the contrary referendums so befuddle them that they end up voting differently than they would have if given more time to study the question. The evidence suggests that such befuddling does not regularly occur.[30]

That said, it is possible to identify those institutional arrangements that establish the conditions that make it easier for voters to make good choices. Four factors contribute to voter competence: 1) having time to devote to thinking about the issue; 2) receiving information about the

issue; 3) having opportunities to discuss the issue; and 4) receiving cues about where prominent groups, parties and individuals stand on the issue.

The amount of time that voters have to focus on an issue will be affected by the number of questions on the ballot, as well as by whether or not the referendum is being held at the same time as an election. If there are many questions, most will receive inadequate attention from voters; and if the vote is held at the same time as the election, voters' ability to focus either on the election or the referendum question will suffer. Rules restricting the number of questions that can be placed on the ballot are therefore appropriate to facilitate sensible decision-making by voters.

Second, voters require adequate information, and to this end one should seek to maximize the availability of differing points of view through the mass media. The concern, however, is that the side with greater financial resources could monopolize the airways. For this reason we favour regulations designed to ensure that different sides in a referendum campaign can gain a public hearing. This means the provision of free air time. And the regulatory body overseeing elections, in negotiation with the key figures in the campaign, should send out information packages to all households, which would include factual information, arguments advanced by all sides, the position of prominent individuals and groups, and the source of funding (if applicable) for the competing sides.

Third, in order to foster public discussion we endorse regulations that encourage the creation of public forums – accessible public spaces where voters can hear and respond to the arguments advanced by both sides in a referendum campaign, and where both sides are given an opportunity to debate with their opponents. This type of exchange adds to the deliberative character of the voter's decision-making process. Regulations could be put in place that ensure that at least one televised debate between campaign leaders be held during each referendum campaign and that there be television and Internet broadcasting of any parliamentary committee hearings that precede the referendum. We also advocate measures similar to the Danish law that provides public money to those organizing a public meeting on the issue at hand only if each side is equally represented at that meeting.[31]

Fourth, it is important that voters receive adequate cues about the positions taken by prominent groups on referendum issues. As analysis of voting behaviour in the 1992 referendum on the Charlottetown constitutional accord has shown, the decisions of many voters were influenced not so much by their own assessment of the accord's merits, but by the positions taken on the accord by prominent figures.[32] Many of these cue-givers, however, may support or oppose a measure for reasons different from those in charge of the official "yes" or "no" campaigns. For this reason, it is important that third parties be permitted to spend money during campaigns to promote their distinct perspectives (although this spending should be subject to regulation). Otherwise, voters may miss receiving signals about where different interests stand. One study of the 1995 Quebec referendum found that cues from third parties – such as labour and business organizations, students, environmentalists, and farmers' unions – were conspicuously absent from press coverage.[33] Taken together, all of these measures will facilitate better decision-making in referendums by voters.

Does the Referendum Threaten Minorities?

One of the main criticisms of direct democracy is that it is a tool that is used to undermine the status of minorities. The argument is that referendums allow the majority to bypass whatever checks and balances may constrain the legislature and to impose its will upon unpopular groups. The concern rests on the important principle that democracy is about far more than "majority rule"

and liberal democratic societies now widely recognize that there must be limits on what the majority can do. Those who raise concerns about threats to minorities during referendums often point to a number of well-known examples from American states, where anti-gay rights ordinances and measures restricting minority language services have all passed by referendum.

In considering this aspect of direct democracy, it is important to distinguish between several separate concerns that are too often conflated. The first issue is whether referendums threaten minority rights; the second is whether they threaten the policy preferences of minority groups; and the third is whether they are likely to exacerbate divisions between distinct cultural groups in multicultural societies.

On the question of minority rights, referendums theoretically can harm rights in two ways: by allowing for the passage of measures that repeal or violate these rights, or by allowing for the defeat of measures that would see new rights entrenched. In practice, however, measures that violate constitutionally protected rights would be struck down by the courts, whether these measures were passed through a referendum or not.[34] For this reason, referendums represent little threat to established rights. On the other hand, one could plausibly argue that a requirement that new rights be approved by referendum could make the entrenchment of expanded conceptions of rights more difficult.

Research from jurisdictions that allow for citizen-initiated referendums has produced somewhat contradictory findings. Barbara Gamble's study of the record in the US, for instance, leads her to argue that "the majority has indeed used [the citizen-initiated referendum] to deprive political minorities of their civil rights." She reviewed 78 citizen-initiated referendums on civil rights at the state and local levels and found that 78 percent of these "resulted in outcomes that constituted a defeat of minority interests."[35] But Shaun Bowler and Todd Donovan dispute the implication of her findings. They note that in practice many anti-minority measures that receive media attention in the US fail to pass, or, if passed, are later struck down by the courts. Crucially, even when they do pass and withstand court challenges, it is not clear that the result differs from the policy that the legislature would have enacted in the absence of a popular vote. They argue that "it has not been empirically established that direct democracy necessarily produces outcomes that are decidedly more anti-minority than those produced by legislatures."[36]

Consider for example the expanded conceptions of rights for same-sex couples, rights that some have suggested might be difficult to win through a referendum. The fact is that the provision of state benefits for same-sex couples has been difficult to pass through the legislature as well. Even the NDP government of Bob Rae in Ontario was unable to pass such legislation, which was instead introduced only when the government of Mike Harris felt compelled to do so by the courts. Extending the coverage of existing rights is difficult, whether by referendum or otherwise, and it is the courts that stand as the best protection for minorities.

It must also be remembered that referendums can be used to compel legislatures to extend protections or benefits to minority groups. In the United States, for example, many of the first states to extend the franchise to women did so through the means of the direct initiative. In the case of Denmark, the referendum has been frequently used to protect minority rights,[37] and in the case of Switzerland, one team of researchers has concluded that not only do voters tend to vote against anti-minority propositions, but they tend to vote to broaden protections for civil rights.[38] The experiences of other countries caution against taking recent US experience as the most indicative.

The second issue of concern in regards to minorities is not that referendums will violate minority rights, but that they will target programs and services that benefit minority groups.[39] It is claimed that while the legislative process can be structured to give minorities a voice in law-making (even if minority groups do not get everything they want), similar compromises and concessions may not characterize referendum voting. In considering this objection, one must first recall that it is a mistake to assume that the adoption of direct democracy introduces a threat to minorities where no such threat previously existed. The government of Ontario did not need a referendum to repeal affirmative action legislation in 1995, or to reduce assistance to the poor through a variety of measures; the same goes for the re-criminalization of aspects of homosexuality by the Thatcher government in the UK. We argue, therefore, that the question is not whether referendums can target minority groups — this is true of all decision-making devices — but whether there are ways to design the process in order to minimize the potential for majority tyranny and whether there are processes that can facilitate the integration of minority concerns into legislation.

Ideally, legislation in a representative democracy is the outcome of a process in which representatives weigh the concerns of their own supporters against a number of other concerns, including those brought forward by opponents, experts and public servants. While those with little economic clout can easily be shut out during this process, it is nonetheless true that minorities can sometimes secure some moderation or amendment to legislative proposals so as to accommodate their concerns. This is as it should be: it is inherently healthy in a democracy for majorities to negotiate with minorities in an attempt to find solutions acceptable to as broad a range of citizens as possible.

At first blush, the opposite appears to be the case with direct democracy: the process seems designed to allow the majority to make the law as it sees fit. Referendums also appear to force voters to offer a simple yes or no response, with no opportunity to make approval conditional on the incorporation of amendments designed to accommodate specific minority concerns. The status of minorities can therefore be threatened not because referendums explicitly target minorities, but because policy is now being made through a process in which there are fewer opportunities for minority concerns to be taken into account. The referendum process appears to be inherently more majoritarian and less deliberative than policy-making by representatives.

In our view, however, this is not an argument for forbidding referendums on contentious issues. Rather, it is an argument for designing the referendum process carefully, with a view to tempering its majoritarian dynamic. As we saw above, some referendum processes (notably the indirect initiative) require that the proposed measure be subject to public hearings prior to the vote, a step that allows minority groups a chance to engage the proposal's sponsors in debate. Furthermore, the legislature should be permitted to amend laws passed by popular vote, allowing laws that have unanticipated adverse effects to be changed without another referendum. These guidelines do not prevent majorities from passing laws that some will see as "targeting" minorities, but what they can do is minimize the possibility that majorities will act via the referendum impetuously, without giving others an adequate opportunity to raise concerns.

Third, in discussing the potential impact of direct democracy on minority groups, special consideration should be paid to the case of societies historically divided along religious, ethnic or linguistic lines into two or more constituent national or cultural communities. Typically such communities are unequal in size — in which case

direct democracy poses a particular problem because the larger community could impose its will on the smaller one, overriding any tradition of cross-community accommodation that may have taken root among political leaders.

Yet one should not necessarily presume that referendums serve only to polarize communities. According to Robin Wilson, director of a Northern Ireland NGO, Democratic Dialogue, the 1998 referendum in Northern Ireland on the Good Friday peace accord helped to accelerate the peace process, with the demonstration of cross-community support for the accord adding legitimacy to the deal and putting pressure on reluctant political leaders. But this does not mean that the referendum device, in and of itself, is a tool for promoting reconciliation: a referendum held in Northern Ireland at another time or in different circumstances could have amounted to no more than a "tribal head count," with Catholic and Protestant voters lining up to register their predictable support for their opposing positions.[8]

The question of how to avoid a ritualistic "tribal head count" compels us again to think about how the process should be designed. What safeguards can be put in place to minimize the risk that a referendum can be used by the majority community as a means of circumventing the need to take the interests of its minority counterpart into account? The most obvious is the stipulation that a "double" or "compound" majority be required in order for the referendum to pass. Double majorities are most appropriate in federal systems – as noted above, double majorities are required both in Australia and in Switzerland. In Canada, the compound majority threshold could be integrated into the process by requiring that voters in Quebec and some combination of other provinces must vote in favour of the question in order for it to pass. If this were done, the referendum could in fact provide greater protection to Canada's regions than does the standard legislative process, with governments often making decisions without significant support from all parts of the country.

The insistence that referendums be structured in such a way as to limit their majoritarian character, however, might well clash with the very impetus behind the referendum itself. It needs to be acknowledged that some of the support for direct democracy in Canada stems from a dissatisfaction with the compromises reached among elites. Regulations requiring double majorities in effect reproduce these compromises as constraints on direct democracy. They also arguably undermine one of the main purposes of a referendum, which is to allow that majority to speak. Nevertheless, in designing the referendum process, a balance must be found between allowing the majority to make decisions and ensuring that the referendum is not used as a weapon by one community against the other. In our view, this balance could be achieved by ensuring that federal referendum legislation incorporate a compound majority provision, a provision that would encourage the building of pan-Canadian alliances on important questions and ensure that legislation can be passed directly by voters only when there is broad consensus.

While we have tried to outline how different rules can temper direct democracy's majoritarian character, it remains the case that referendums can be disruptive in certain contexts – namely when societies are deeply divided on an issue of fundamental importance. Does this mean, however, that referendums in such situations should always be avoided? This is far from clear. In some cases, the alternative to a referendum – the avoidance of the issue and the preservation of the status quo, or the striking of a bargain among elites without public endorsement – can be even more divisive. As André Blais has noted, tensions between Canada's two major linguistic communities have been kept manageable because of the use of referendums in Quebec (in 1980 and 1995), and

the political situation might have been further improved had more referendums been held. For example, popular ratification (by double majority) of the 1982 constitutional package would have added legitimacy to the deal and, if it had passed in Quebec, might have prevented two decades of constitutional conflict.[41]

Another interesting case to consider is that of the 1942 Canadian referendum on conscription. The conventional chronicling of this episode blames the referendum itself for polarizing the country's two linguistic communities, focusing on how the vote enabled a national majority to excuse Prime Minister King from a promise he had made to the minority. Yet this interpretation does not consider that the government would likely have been compelled by the course of events to introduce conscription anyway, with or without a referendum. Moreover, Canadians were already deeply divided on the issue, and the referendum merely served to highlight – and not create – this division for the benefit of King, his ministers, and the country. By so doing, the referendum helped to reinforce King's predisposition towards a cautious approach to the imposition of conscription, and arguably contributed to his government's relatively effective management of the crisis.[42] Again, the lesson is that referendums are neither inherently divisive nor benign. Their effects are determined by the rules according to which they are conducted, the political circumstances in which they are held, and the motives and actions of the political actors that seek to make use of them.

Is the Referendum Process Fair?

Even if one has a commitment in principle to direct democracy, one could still reject it as unworkable because it is not fair to all citizens. This concern stems most notably from the often unequal access to the funds necessary to wage a successful campaign. Some American scholars have expressed concern that "well-financed measures enjoy a significantly greater chance of winning than those that are poorly financed."[43] In Switzerland similar concerns have been occasionally raised, although the lack of spending restrictions has not led to a spiralling escalation of spending because it would be so out of place with the Swiss political culture. In the case of the UK, the parliamentary committee on standards in public life noted that "there is a serious risk of a gross imbalance in resources." As evidence, they point to the 1975 UK vote on membership in the European Community, when the "yes" side outspent the "no" side by a factor of 20 to one, and to the 1997 referendum on devolution in Wales. In the latter case, the committee observed that the campaign and spending were "very one-sided, with the last-minute No organisation seriously underfunded...and a fairer campaign might well have resulted in a different outcome."[44] These concerns about spending are real, but need qualification.

First, it is important that we not hold direct democracy to an unrealistic standard. The existing electoral and legislative process is not beyond reproach, and the unequal distribution of wealth in democratic societies creates advantages for those with resources regardless of whether decisions are made through representative or direct democracy.

One should also note that the record around the world is replete with cases of successful referendums championed by less-than-wealthy interests and failed campaigns launched by well-organized interests with ample resources. In the US in particular, broad-based coalitions – such as consumer groups or those concerned about a particular environmental question – have often been successful in using the initiative to further their agenda. In contrast, narrow industry groups that have turned to the initiative after failing to secure passage of measures through the legislative process have met with repeated defeat. Put simply, the group with the most money does not always win. (It should be

underlined that in the US, high spending is often used successfully to defeat initiatives through the purchase of a great deal of advertising that serves to confuse voters and make them reluctant to risk change, but such spending is much less successful at securing the passage of initiatives.[45]) In the case of government-initiated referendums on high-profile issues, financial resources are usually of distinctly secondary importance: individuals often have standing opinions on the question at hand, and the news media can be counted on to ensure that both sides receive extensive coverage. Furthermore, when coalitions of elites put forward referendum proposals, they are often defeated by underfunded grassroots coalitions.

Yet the case for imposing limits on campaign spending remains strong, not only because the amount of money spent has been identified as one important variable influencing outcomes, but for a variety of other reasons as well. First, many referendums, particularly government-initiated ones, concern issues of fundamental importance to the political community, such as the constitution, devolution, or international treaties, and any perception that the process is unfair has a direct effect on the esteem in which citizens hold the overall system of government. Second, unlike the ordinary legislative process, referendums hold out the promise that the public has a direct say in decision-making. Thus, to the extent that the perception takes root that only the wealthy have influence, an important part of the very purpose of the exercise is undermined. Third, and more generally, high-spending referendum campaigns have the potential to further erode public trust in the political process because of the way in which they play to the advantage of groups seeking to use the device for less than sincere purposes. For example, in some US states those with access to the necessary funds have been known to qualify questions for a vote knowing that they would most likely lose, doing so only in order to sap the financial resources of their poorer opponents. For example, in Colorado, an anti-tobacco initiative qualified for the ballot with the support of many in the medical profession. The tobacco industry responded by rapidly qualifying an initiative that would require insurance companies to pay for "alternative healers." Why? The tobacco industry reasoned that the medical profession would be forced to protect their own interests and divert their resources to fight against the alternative healers measure, thereby reducing the time and money available to support the anti-tobacco measure. Clearly, the regulation of spending is one of the most effective ways to limit the ability of interest groups to qualify measures in the absence of a genuine level of popular support for them.

We therefore support the imposition of controls on campaign spending (including spending on the signature gathering that might launch a citizen-initiated referendum), as was the case for the 1992 referendum on the Charlottetown Accord and the two Quebec referendums on sovereignty.[46] A discussion of which specific regulations are best is beyond the scope of this paper, but we contend that it is important that groups unaffiliated with the two sides be permitted to spend their own resources, subject to spending restrictions. We also think that some form of public funding for campaign committees should be considered, especially in cases where groups with little resources might otherwise be unable to defend their interests in a citizen-initiated referendum campaign launched by their more well-financed opponents. The UK parliamentary committee on standards in public life concluded that "if a referendum is to be fair...[it is] essential that both sides of the argument should be funded at least well enough to enable them to put their case before the voters."[47] Exactly how public funding would be allocated, and whether public funding to campaign organizations should be in the form of the provision of "core funding" to each side or should take another

form, are technical questions that we will not consider in this paper. Finally, it is crucial to make it very clear who is funding referendum campaigns because this information provides an important cue to voters about what is at stake. Making the funding of campaigns transparent in this way often serves to undermine material advantages because voters can vote against big spending groups that they do not trust. Whatever the precise means adopted, these various practices related to campaign spending and the disclosure of the origin and size of campaign contributions would make the politics of referendums in Canada significantly different in character from that which is frequently witnessed in the United States. Finally, it almost goes without saying that the government should be prohibited from using the resources and agencies of the state to advocate on behalf of one side of the issue, although in the UK referendum of 1975 on the EEC, of 1997 on devolution, and of 1998 on the Good Friday peace accord, the government did just that.

The issue of fairness goes beyond campaign spending. Another important issue is the wording of the question. In the US, while the proponents of initiatives are permitted to phrase the question, the law requires that each question deal with a single issue. The final say on what constitutes a single issue is given to the courts.[48] Court intervention in referendums is far from unusual. In Italy, the courts must approve the question that goes before the public during abrogative initiatives. In 1998 in Portugal, the Supreme Court ruled that the government's proposed referendum question on the European Union was insufficiently clear to be asked.[49] Most US states do not allow the initiative's proponents to write the summary description or title of their propositions, both of which are left to public servants, preventing voters from being overtly misled by the title or the summary. Similar provisions should be replicated in Canada, should the initiative be adopted here.[50]

As mentioned above, there should also be rigid restrictions on the number of questions that can be placed before voters at any give time. This can be accomplished by setting the threshold for signature collection at a high enough level to deter all but the highest profile issues from qualifying for the ballot. The relative ease with which measures can be qualified in Switzerland has meant that a single election cycle can feature numerous ballot questions, many of which are highly technical. An electorate faced with a large number of questions is easily overwhelmed. Many voters feel that they are faced with too many decisions and do not have sufficient time to find out about the issues.[51] In such circumstances, many respond by voting "no" or by not voting at all. The bottom line is that the electorate's ability to exercise reasoned control of the law-making process is undermined when faced with too many issues.

There is also the question of whether the governing party should have a free hand in writing the question in the case of government-initiated referendums — an issue of particular interest to Canadians in light of concern over the government-designed questions used in previous Quebec referendums on sovereignty. Government-initiated referendums give the ruling party a great deal of power, including the final say in terms of when to call a vote, on what issue, and what question to submit to the public. The government's decisions naturally are taken to maximize its advantage in the ensuing campaign. This is inescapable and few governments would be willing to call a referendum unless they retained control over key elements of the process. However, subtle differences in the wording of a question can be important, and in a close campaign, the wording alone can make all the difference. The question then arises: without removing the government's prerogative to write the question, can anything be done to enhance the fairness and credibility of the process?

One option would be to require that the question be approved either by the official opposition or by a vote of two-thirds of the legislature, though in such cases the effect would be to allow the opposition to veto a referendum question which the government wanted to ask. Another option would be to allow the opposition to place an alternative question on the ballot in the event that they object strenuously to the one the government has chosen. Such processes are not unheard of: in Switzerland, the government often places a "counterproposal" on the ballot next to the citizen-initiated question, and in 1993 a referendum took place on the subject of the status of Puerto Rico in which the contending parties were each allowed to word their preferred option and have it placed on the ballot.[52] In Quebec, it is possible that the presence of two questions could lead to an interesting result: simultaneous majorities for sovereignty and federalism.[53] The right of both the government and the official opposition to place their preferred question on the ballot is one option worthy of serious consideration.

An alternative is to require televised public legislative hearings on the subject of the question itself before it is written by the government. In effect, this means that the question text would become a subject of public debate well before the campaign begins. In any future referendum on Quebec sovereignty, this would mean the government would announce its intention to hold a referendum on the subject and then seek public input and debate on what question wording would be most clear and fair. This contrasts with the existing practice, whereby the question is written secretly by the government with the goal of advancing its own strategic objectives. In the case of the federal legislation currently governing the conduct of referendums in Canada, it is notable that, while the law stipulates that the question must be debated by parliament, the time for debate is limited, and there is no provision for the question to be examined by a parliamentary committee either before or after its wording is finalized.[54] Hearings on the question itself would provide interested groups with an opportunity to voice their concerns regarding clarity and fairness. Issues relating to the meaning and implications of different types of questions can come to the fore in the course of public hearings. We argue that this public airing of views and concerns would make it more difficult for a government to ask an overtly ambiguous question.

Does Direct Democracy Empower Voters?

One of the fundamental theoretical justifications for the referendum is that it empowers citizens. But in practice this is only partly true. While both government-initiated referendums and obligatory referendums give voters the power to veto proposed changes, the ability to initiate change remains in the hands of the government. Furthermore, governments often choose to use these referendums in order to advance their own strategic objectives and not because they genuinely wish to give the public a more direct role in decision-making.

In the case of the abrogative and the indirect initiatives, however, citizens clearly have a greater role to play since it is they who initiate the process. At the same time, elected representatives remain front and centre: these referendums provide an effective means through which voters can engage with parliamentarians, rather than bypass them. In our view, these forms of the referendum offer a balance between the need to increase voters' influence on the political agenda and the need to sustain the important organizational, accountability and integrative functions performed by elected officials.

On the surface, the direct initiative seems to go further in satisfying the proponents of direct democracy by transferring power to citizens. Such an assessment is somewhat misleading. In the

case of the US, at least, the degree to which the public is empowered is questionable. While the impetus for the spread of direct democracy has been the public's demand for a means to ensure that its views prevail over the more narrow interests of powerful groups and individuals, today the direct initiative can produce the opposite result: powerful but narrowly-based interests make use of the device to defeat propositions that arguably have a broad base of support. They do so by raising strong enough doubts in the minds of voters to incline a majority to shy away from change.

Thus, in many US states, the direct initiative has become a device that is more often than not deployed strategically by rival parties and interest groups to advance their own narrowly-based interest. The professionalization of every aspect of the process has served to ensure that the gap between the ideal of direct democracy and its practice in these US states has become almost unbridgeable. The implication is that an "open" process with little direct control by political parties does not guarantee that voters will be empowered; in fact, it is the presence of appropriate regulations and the maintenance of an important if circumscribed role for parties that increases public influence over policy.

Of course, the experience with the direct initiative in Switzerland is very different from that of the United States. One reason for this is that the initiative is integrated into the unique Swiss process of government — a process that we noted has been described as "negotiated direct democracy." This means that the initiative operates within a distinct political culture that is both more deliberative and less majoritarian than that of the US or Canada. For this reason, one should be wary of concluding that the Swiss experience with the direct initiative could be easily replicated elsewhere.

Recommendations and Conclusions

Does Canada need more direct democracy? Would the holding of more referendums on a wider range of topics make a constructive contribution to the political life of the country? We say that it would. Between elections, Canadians often feel shut out of the political decision-making process. The extent to which the executive, and particularly the prime minister and closest advisors, exercise tight control over the legislative agenda is exceptionally high in Canada.[55] In Canada, the power of the executive is not tempered by an elected or effective senate, as in Australia; by the formal separation of the legislature from the executive, as in the US; by a strong system of legislative committees, as in Germany; by widespread public consultations, as in Switzerland; or by a tradition of independence among individual legislators, as in the UK. Thus, while the governing party may be sensitive to public opinion, there remain fewer opportunities in Canada than elsewhere for those outside of the prime minister's inner circle — be they lesser ministers, backbenchers, opposition parties or citizens themselves — to influence public policy.[56] There are few reliable mechanisms for transmitting public concerns to the government and having them reflected in decision-making, which is damaging to the quality of democratic life. We therefore endorse the referendum as one possible reform that can help redress this situation. However, this does not mean that any type of direct democracy is advisable. Some forms of direct democracy are compatible with Canadian political values, while some are not.

Government-Initiated Referendums

We recommend that governments use the referendum more frequently, particularly when they

are in fact uncertain or divided on an issue, and so genuinely seeking the guidance of voters (as was the case, for example, in the May 2001 referendum in New Brunswick on the use of video lottery terminals). When the purpose of a referendum is to consult the population and not just to cajole them into giving their approval, it can be used both more creatively and to greater effect. If the government is prepared to remain neutral during the campaign, its own credibility is not linked to a given outcome and the stakes of the referendum for the parties are not necessarily high. Furthermore, the outcome of the vote is less likely to be tied to the popularity of the government launching the referendum and more likely to reflect citizens' views on the substance of the issue at hand. If the government were genuinely uncertain about its preferred path, it might be inclined to allow for more public input: the referendum, for example, could be preceded by a period of consultation in the form of parliamentary committees soliciting advice on the range of options to consider and, eventually, the precise wording of the question that should be asked. With the major political parties not compelled to adopt the rigid roles of leaders of "yes" and "no" options, legislators and parties could cooperate in the development of alternatives and by so doing show themselves to be relevant actors in the policy-making process. The referendum itself would not have to offer a single, final, yes or no choice: on rare occasions on particularly important issues, multiple ballots could be used over a period of time, with earlier ballots offering voters more than two options from which to choose. Governments often face important issues on which they have no clear opinion or are divided internally, and we suggest that one source of guidance in such circumstances is the public itself.

It is important that the public not come into the process only at the final stage, to say yes or no to a question that it did not write, on an issue that it may not have wished to discuss. On some issues, the referendum should be part of a larger process of public dialogue. Clearly such a process could be used only occasionally, but when faced with important choices, governments, through the use of commissions, could choose to facilitate conversation rather than advocate on behalf of one position. By so doing, the referendum and consultation process could provide citizens with a more genuine say in government.

Obligatory Constitutional Referendums

The argument for using the referendum in the case of constitutional amendments is strong: the government has an obligation to seek the consent of the people when proposing to change the rules that govern the exercise of political power. However, in the wake of the Charlottetown Accord, it is clear that referendums on major constitutional changes in Canada are likely to prove very difficult. To merely formalize the convention that referendums be used for major amendments does nothing to facilitate and improve the process of constitutional change. The difficulty in Canada is that the amending formula for major change is exceptionally onerous. This is not something that will be easy to alter and so one must look to processes that can help facilitate consensus building.

Focusing on an all-or-nothing vote as the final stage in the process of constitutional amendment seems misplaced. Instead, greater attention should be paid to maximizing public input in the earlier stages of constitutional discussions, before the terms of amendment have been finalized. One form this might take is a "people's convention," along the lines of that used in Australia on the question of replacing the Queen as head of state. Such a consultative exercise should not be confused with the ones that preceded the Charlottetown Accord, including the Spicer Commission. There is a great deal of difference between processes that allow only for the public airing of

grievances, and processes explicitly invested with the authority to debate issues, work through problems, and issue recommendations on the content of the proposal and the question to be submitted to a referendum. When a public body knows that it is actually integrated into the decision-making process, it is more likely to adopt a thoughtful and integrative approach. The Australian process itself was not without its problems, but it did serve to focus choices, interest the public, and contribute to more informed decision-making.

We recognize that changes to Canada's constitutional amending formula are unlikely. Bearing this in mind, we suggest that the process for initiating and debating constitutional amendments be formalized. We do not insist that the use of the referendum become legally obligatory, but do suggest that if a referendum is to be used, it be preceded by a people's convention. This convention would be charged with formulating the precise proposal and drafting the referendum question — hence issuing a recommendation to the population for popular approval. The convention should be made up of appointed delegates and delegates elected specifically to participate in the convention. These suggestions are designed to facilitate the integration of Canada's diverse communities, promote the brokerage of competing interests in a more public way, and as a result facilitate the passage of amendments.[57] The use of such conventions would decouple the issue at hand from the popularity of the governing party. When the governing party itself sponsors the referendum and establishes the terms of debate, it becomes difficult for unpopular governments to secure victory in a referendum, even when the proposal is one that the population might otherwise support.

Obligatory Referendums on Other Policy Matters

Some governments of late have proposed that certain policies — notably tax increases — should be prohibited unless first approved by referendum. This would not constitute what we term a sincere use of the referendum. Such proposals are far more concerned with the tactical use of referendums to entrench one ideological agenda rather than with any genuine commitment to the enhancement of popular control over government. The use of the referendum in this way would not allow the public to choose between competing policy options — such as tax increases versus cuts to spending on health care — but would simply make it more difficult for future governments to reverse the policies of their predecessors. In fact, requiring referendums on some measures of ordinary policy-making but not others steals control away from the public: the referendum requirement means that some options are more difficult for governments to pursue. The result is that governments will be more likely to choose the easier course of action, even if it is not the choice the public would prefer.

By proposing the expansion of direct democracy in such a crass way, one may end up deepening rather than redressing the public's distrust of government. The public opinion data collected by the IRPP and presented in Figure 1 indicate that the population generally recognizes that it is the government's responsibility to make important budgeting decisions: while the majority say that referendums on tax increases and cuts to social spending should be held at least sometimes, fewer than 30 percent say they should always be held. Moreover, the number supporting referendums in each of the two cases is remarkably similar, suggesting that the population does not want to place some budgeting decisions in a special category while leaving others to the ordinary political process.

The Citizen-Initiated Referendum

We endorse the use of referendums as a means of enhancing public participation in politics and of enabling citizens to exert a more direct influ-

ence over the direction of public policy. For this reason, we believe that in addition to government-initiated referendums, citizens themselves should have the opportunity to place issues on the political agenda and bring them to a vote. However, we do not support the adoption in Canada of the direct initiative. Our reasons:

- Of all the types of referendum, it is the most majoritarian: measures can be passed by a narrow majority of voters without requiring that they first be made the subject of a process of dialogue or bargaining among different groups that might lead to the development of compromises;
- For the same reasons, it is the least likely variant to promote the type of deliberation that is a necessary pre-requisite of good decision-making. Direct initiative proposals are drafted in private by narrowly-based groups, and much of the debate about the measures takes the form of competing TV ads;
- It poses the greatest threat to the principle of governmental accountability, since parliament is likely to be constrained by measures passed without its input and that it might not be able to amend or repeal.

For these reasons we argue that the direct initiative is not compatible with the better traditions of Canadian liberal democracy, especially those related to the search for accommodation among different groups. While it is true that Switzerland has successfully used the direct initiative consistent with these traditions, the Swiss case is *sui generis*: its direct initiative works only in the context of other elements within its political system.

As we have noted, the indirect initiative offers a viable alternative. What is crucial to the indirect initiative are those things which take place between the launching of the initiative and the referendum vote — namely, the submission of the proposal for consideration by parliamentary committee, the ensuing opportunities for the proposal to be amended, and the option for the government to enact a measure in response. (In the case of New Zealand, what is important are the activities that occur after a successful popular vote but before the adoption of legislation, activities which mirror the ordinary legislative process.[38]) In contrast to the direct initiative, then, the indirect initiative is embedded in a process that is both deliberative and integrative. It is conducive to the maintenance of accountability, in that governments and parties must take some responsibility for the proposals put to voters, or, in the case of New Zealand, the legislation eventually adopted.

There are a number of technical questions to consider. For example, how easy should it be to get a question on the ballot? This is affected by three factors: the number of petition signatures required for a measure to qualify, whether a minimum number of signatures needs to be collected within specific geographic areas, and the length of time permitted for the collection of signatures. We argue that these thresholds should be set high enough to ensure that only those few initiatives with a broad base of support can qualify.[39] Most importantly, the rules should require that initiatives have some support in all areas of the country. There is also the question of whether, once put to the vote, an initiative must win a double majority in order to pass. We argue that, as in other federations such as Australia and Switzerland, measures should be required to pass in a minimum number of provinces, including the province of Quebec. Taken together, these requirements will mean that only groups with a broad base of national support will be able to effectively launch petition drives. These broadly based national groups would include political parties. Because of parties' organizational resources, we believe that the initiative could turn out to be the parties' best friend, revitaliz-

ing their policymaking role and providing opposition parties with an opportunity to play a constructive role in government.

Imaginative Uses of the Referendum

Regardless of the type of referendum used or the issue at hand, the range of options available to government is far wider than usually thought. We typically think about referendums as a one-shot, all-or-nothing contest. But this is not the only possible arrangement. In fact, in other jurisdictions, referendums have been used far more imaginatively. Referendums can be used creatively in a variety of ways to help manage conflicts, alleviate tensions, settle issues, and enhance the legitimacy of political decisions.

In the first instance, the use of non-binding advisory plebiscites should be considered. Canadians are perfectly capable of helping governments set priorities and choose among alternative courses of action. In our view, they are less willing than they once were to simply await the outcome of cabinet meetings to discover whether taxes will fall or the Canada Health and Social Transfer (CHST) will be increased. Plebiscites that asked Canadian voters to weigh the options of tax cuts, social spending, and debt reduction are feasible and consistent with their political abilities. Using the referendum in this manner would allow for meaningful public input into policy-making while retaining for governments their leadership and decision-making responsibilities.

A second option is to have more than one referendum on the same issue. This does not mean bringing the same issue to the population over and over again in the hopes of achieving a desired result, as has occurred in Quebec with the issue of sovereignty and in Denmark with the issue of the European Union. Rather, it means involving voters in a genuine dialogue with their representatives. By means of a series of direct consultations, for instance, voters can become involved in the process of revising successive drafts of important pieces of legislation; at each stage, certain amendments could be approved and others discarded. At the end of the process, voters would be able to pronounce upon a text that they had had a direct hand in creating. This is not too different from the process that was used in Newfoundland to secure its entry into confederation — a process that included two sequential votes, with the first vote having multiple options on the ballot. The process that led to the creation of the new canton of Jura in Switzerland was even more complex, featuring a series of referendums, through which the canton of Bern approved the right in principle for Jura to secede and form its own canton, the people of Jura voted to secede, regions within Jura voted on whether to stay in Bern or join the new canton, and the people of Switzerland voted to accept the new canton, the constitution of which was written by a popularly elected constituent assembly.[60] What is instructive in this case is the way that the use of multiple referendums was combined with deliberative forums in an ongoing decision-making process, with the public consulted formally at various stages of the process to give their assent. Such an elaborate form of consultation could only be used sparingly — by no means do we believe that Canadians want to be bombarded with a never-ending series of cascading referendums. Nor do we believe that this would lead to good policy. But on key issues such as changing the electoral system or Senate reform, they could be highly appropriate.

A third imaginative option would be to use the referendum not to ratify policy outcomes but to endorse processes for dealing with outstanding issues. Voters could be consulted about whether they agreed that action was needed on a given issue, and whether they agreed to the way in which the government proposed to deal with it. The referendum, in this case, would give the government a mandate to proceed with a stated course of

action. And having approved the process, it would be more likely that voters would recognize the final outcome as legitimate. Again, such a process should be used sparingly, but on key issues it may be highly appropriate. To take one example, many observers have argued that it is highly problematic to make the results of treaties negotiated between governments and First Nations subject to a general referendum. Not only are the details of each treaty legally complex, but the integrity of the negotiation process depends on both parties being bound as far as practical by the promises they make to one another. One way to deal with this issue would be to use a referendum to give the government a popular mandate to negotiate agreements on Aboriginal self-government on the basis of a general framework that the government could outline. The government could even ask voters to endorse a team of negotiators, who could be questioned before parliamentary hearings.[61]

Conclusion

Whatever the form of referendum used, the process should be governed by the different regulations that we have highlighted throughout this paper, including restrictions on campaign spending and disclosure of the sources of funding, the provision of free broadcast time and the distribution of information to voters by the non-partisan agency governing the vote, the use of parliamentary committees to facilitate public debate about the choice of the question, strict limits on the number of questions that can be placed before voters at any one time, and the requirement that referendums pass by a double majority that accords regional vetoes. Taken together, these measures would serve to ensure that the referendum process is as deliberative as possible, that its majoritarian nature is tempered by adequate integrative measures, that it is as fair as possible, and that it does not displace parties or parliament from their central role in political decision-making. We argue that the types of referendum we have recommended, when combined with these rules, can lead to a form of direct democracy that is compatible with the essential values of Canadian democracy. Such a process would provide citizens with greater opportunities for participation in decision-making and with more direct influence over public policy, without undermining the practice of responsible and accountable government, allowing the process to be captured by narrow interest groups, or facilitating majority tyranny. Importantly, it would make legislation on important questions more sensitive to and representative of the views of the public, something we should value in a democracy.

Our argument has been that the enhancement of democracy requires much more than an increase in the number of opportunities for citizens to vote, though this is one part of the picture. It requires an increase in the opportunities for citizens to participate in political deliberation: to engage each other and their elected representatives in a meaningful conversation in which not only the political executive, but also parliamentarians, interest groups, and the general public have a meaningful say in decision-making. The increased use of direct democracy, properly structured, can help in achieving this goal.

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1 There are many different types of referendum. In this paper we will be drawing attention to these differences as the need dictates, though we will use the general term "referendum" to refer to all of them. This paper will not deal with the mechanism of recall, whereby an elected representative can be unseated by means of a citizen-initiated vote in her or his constituency. We exclude it from our discussion because its use raises issues that are significantly different from those raised by the referendum.

2 Laurence Morel, "The Rise of Government-Initiated Referendums in Consolidated Democracies," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

3 For instance, in the US there were a total of 323 state-wide initiatives between 1991 and 1998, compared with 276 in the 1980s, which itself was very high compared to previous decades. See Steven Craig, Amie Kreppel and James G. Kane, "Public Opinion and Support for Direct Democracy: A Grassroots Perspective," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

4 Andreas Gross, comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999. We do not examine the reasons for this increase, but we do take as a given that an important shift in political attitudes has taken place, the effect of which has been to make citizens more confident in their own ability to make key policy decisions and less confident in the ability of their elected representatives to do so on their behalf.

5 For a full history of the referendum in Canada, see Patrick Boyer, *Direct Democracy in Canada: The History and Future of Referendums* (Toronto: Dundurn Press, 1992), chaps. 2 and 3.

6 Judy Rebick, *Imagining Democracy* (Toronto: Stoddart, 2000), pp. 91-104.

7 Canadian Alliance, *A Time for Change: An Agenda of Respect for all Canadians* (first ed., October 2000), p. 20.

8 Canadian Alliance Policy Declaration, January 2000, item 72. Posted on the Canadian Alliance website at: *http://www.canadianalliance.ca/yourprinciples/policy_declare/index.html*. The policy platform of the Reform Party, the Alliance's predecessor, was more detailed. The Reform Party called for binding national referendums on the issues of capital punishment and abortion, and also stated that the government "should not be permitted to run a deficit or to raise tax levels unless authorized by a national referendum." In the case of changes to the constitution, the party supported a new amending process that would "replace the ratification power of Parliament and the provincial legislatures with that of the people, as expressed in binding referenda." Finally, the party supported the idea that citizens should be able to "initiate binding referenda on new legislation and constitutional amendments." See: Reform Party of Canada, "Principles and Policies," 31 August 1998. Accessed by the authors on the party's website at: *www.reform.ca/bluebook/* (this website is no longer available).

9 This objection would only be valid if efforts were made to make referendum results binding on governments and the Crown in such a way that the legislature itself was to be bypassed altogether, or the prerogatives of the Governor General (however theoretical they may be) were to be abrogated. But this is not what is generally meant by a "binding" referendum in the Canadian context. It is true that Manitoba's Initiative and Referendum Act, passed in 1916, was overturned by the courts precisely because it was held to unduly constrain the powers of the lieutenant governor (the act stipulated that a measure passed by voters would become law, without requiring that it receive royal assent). But current proposals for direct democracy in Canada generally do not propose to do away with the need for royal assent, nor would it be necessary to do so (see Boyer, *Direct Democracy in Canada*, p. 89). Rather, a referendum can be understood as binding in the sense that the government of the day commits itself to following the results of the popular vote, and there is nothing in law or convention that prevents a government from doing so.

10 This criticism of the referendum device was made in an earlier context by Richard Cashin. See his comment in Citizens' Forum on Canada's Future, *Report to the People and Government of Canada* (Ottawa: Minister of Supply and Services, 1991), p. 141.

11 Centre for Research and Information on Canada, "Portraits of Canada 2000." Surveys conducted in October 2000 by Environics (in the provinces outside Quebec, N = 1018) and CROP (in Quebec, N = 1001). The survey is available on the website of the Council for Canadian Unity at *www.ccu-cuc.ca*.

12 It was the issue of abortion that caused respondents the greatest reservations, again highlighting the wise strategic choices of parties during the election campaign to use this issue to criticize the Alliance's position.

13 See Tim Mowrey and Alain Pelletier, "Referendums in Canada: A Comparative Overview," *Electoral Insight*, Vol. 3, no. 1 (January 2001), p. 19. Available on the website of Elections Canada: *http://www.elections.ca/content.asp?section=eca&document=index&dir=eim&lang=e&textonly=false*.

14 Arthur Lupia and Richard Johnston, "Are Voters to Blame? Voter Competence and Elite Maneuvers," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

15 The classic text on the initiative in the United States is quite critical: David Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore: Johns Hopkins University Press, 1984). For a more favourable view of the initiative, see Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum and Recall* (Cambridge: Harvard University Press, 1989).

16 Shaun Bowler, Todd Donovan and Caroline J. Tolbert (eds.), *Citizens as Legislators: Direct Democracy in the United States* (Columbus: Ohio State University Press, 1998).

17 Elisabeth Gerber, *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation* (Princeton: Princeton University Press, 1999).

18 Peter Schrag, *Paradise Lost: California's Experience, America's Future* (Berkeley: University of California Press, 1999).

19 Pier Vincenzo Uleri, "Italy: Referendums and Initiatives from the Origins to the Crisis of a Democratic Regime," in M. Gallagher and P.V. Uleri (eds.), *The Referendum Experience in Europe* (London: Macmillan Press, 1996). pp. 106-25.

20 Alexander H. Trechsel and Hanspeter Kriesi, "Switzerland: The Referendum and Initiative as a Centrepiece of the Political System," in Michael Gallagher and Pier Vincenzo Uleri (eds.), *The Referendum Experience in Europe* (London: Macmillan Press, 1996).

21 Wolf Linder, *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (New York: St. Martin's Press, 1994), p. 100.

22 Trechsel and Kriesi, "Switzerland," p. 192.

23 Jurg Steiner, *Amicable Agreement Versus Majority Rule: Conflict Resolution in Switzerland* (Chapel Hill, NC: University of North Carolina Press, 1974).

24 Brian Galligan, "Amending Constitutions Through the Referendum Device," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citzens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

25 Galligan, "Amending Constitutions."

26 See, for example, Ian Budge, "Political Parties in Direct Democracy," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

27 See Elizabeth Gerber and Simon Hug, "Legislative Response to Direct Legislation," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citzens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

28 Schrag, *Paradise Lost*, pp. 21, 65.

29 These conclusions benefit from the findings of: Shaun Bowler and Todd Donovan, *Demanding Choices: Opinion and Voting in Direct Democracy* (Ann Arbor: University of Michigan Press, 1998), and Arthur Lupia, "Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections," *American Political Science Review*, Vol. 88, no. 1 (March 1994), pp. 63-76.

30 See, for example, Bowler and Donovan, *Demanding Choices*.

31 Drude Dahlerup, comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999.

32 Richard Johnston, André Blais, Neil Nevitte and Elisabeth Gidengil, *The Challenge of Direct Democracy* (Montreal and Kingston: McGill-Queen's University Press, 1996).

33 Richard Jenkins and Matthew Mendelsohn, "The News Media and Referendums," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

34 We are speaking here of the Canadian context, where the constitution's guarantee of rights and freedoms cannot be altered except by a formal constitutional amendment, something which cannot be brought about simply by means of a referendum.

35 Barbara S. Gamble, "Putting Civil Rights to a Popular Vote," *American Journal of Political Science*, Vol. 41, no. 1 (January 1997), p. 246, 254, 262.

36 Shaun Bowler and Todd Donovan, "Popular Control of Referendum Agendas: Implications for Democratic Outcomes and Minority Rights," in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (London: Palgrave, forthcoming).

37 Palle Svensson, "Denmark: The Referendum as Minority Protection," in Michael Gallagher and Pier Vincenzo Uleri, *The Referendum Experience in Europe* (London: Macmillan, 1996).

38 Bruno S. Frey and Lorenz Goette, "Does The Popular Vote Destroy Civil Rights?", *American Journal of Political Science*, Vol. 42, no. 4 (October 1998), p. 1343.

39 Dorothy Ehrlich, comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999.

40 Robin Wilson, comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999.

41 André Blais, comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999.

42 See J.L. Granatstein and J.M. Hitsman, *Broken Promises: A History of Conscription in Canada* (Tbronto: Oxford University Press).

43 Cronin, *Direct Democracy*, p. 215.

44 Fifth Report of the Committee on Standards in Public Life (United Kingdom). *Standards in Public Life: The Funding of Political Parties in the United Kingdom. Volume 1: Report and Appendices* (The Stationery Office, October 1998), paragraphs 12.45; 12.32. Available at: *http://www.official-documents.co.uk/document/cm40/4057/contents.htm/volume-1/volume-1.pdf.*

45 We are very grateful to Rick Arnold and Earl Bender, to whom we owe much of our understanding concerning the dynamics of direct initiative campaigns in the US states (comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999). Neither, however, would necessarily agree with how we have chosen to characterize the process.

46 For a review of the rules governing the conduct of these referendums, see Mowrey and Pelletier, "Referendums in Canada."

47 *Standards in Public Life*, paragraph 12.31.

48 The question of how one interprets what constitutes a "single issue" is often the subject of debate, and different state courts interpret the provision in different ways (see Daniel Hays Lowenstein, "California Initiatives and the Single-Subject Rule," *UCLA Law Review*, Vol. 30, no. 5 (June 1983), pp. 936-75).

49 The proposed question was: "Do you agree with the continuing participation of Portugal in the construction of a European Union within the framework of the treaty of Amsterdam?" Translation courtesy of Simon Hug.

50 Note that the existing legislation governing citizen-initiated referendums in Saskatchewan allows the government to submit the citizens' proposal to the courts in order for its wording to be clarified. See Mowrey and Pelletier, "Referendums in Canada," p. 19.

51 Steven Craig *et al.*, "Public Opinion and Support for Direct Democracy."

52 We are grateful to Lawrence LeDuc for bringing this case to our attention.

53 Such a result would create confusion, but nonetheless it would be a truer reflection of the public's preferences than either a "yes" or a "no" answer to a single option. Arguably, the result would be constructive: since a good number of voters would have shown themselves to be supportive of both options, it would be harder for politicians to divide the Quebec electorate into two great hostile camps. In any event, any political crisis unleashed after such a scenario would be less severe than that which would follow a narrow "yes" vote to sovereignty (presuming that many sovereigntist voters remained committed to their province remaining a part of Canada, as is currently the case).

54 See Boyer, *Direct Democracy in Canada*, Appendix 2.

55 Donald J. Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 1999).

56 A recent survey of several federations found that citizens in Canada had fewer opportunities for democratic input into policy than citizens in other jurisdictions, with citizens in the US, Australia, Germany and Switzerland all having some combination of more frequent elections, more citizen-initiated referendums, more constitutional referendums, an elected upper house, an upper house which effectively represents the regions, more elaborate public consultations on legislation before it is passed, and stronger, more representative interest groups that have an institutionalized voice in decision-making (Matthew Mendelsohn and John McLean, "Reconcilable Differences: Public Participation and Intergovernmentalism in Canada," in David Stewart and Paul Thomas (eds.), *Federalism and Democracy* (Winnipeg: University of Manitoba Press, forthcoming)).

57 Matthew Mendelsohn, "Public Brokerage: Constitutional Reform and the Accommodation of Mass Publics," *Canadian Journal of Political Science*, Vol. 33, no. 2 (June 2000), pp. 245-72.

58 We recommend that the referendum vote be held only after the measure has been considered by parliament and legislation drafted — as is the case in Massachusetts but not in New Zealand.

59 In the case of the existing legislation in the provinces of British Columbia and Saskatchewan, the thresholds are set too high (10 percent and 15 percent respectively), making it very difficult for any measure to qualify. Without making it so onerous, we believe that the number of required signatures should be relatively high (about eight percent of the electors in the previous election), the time period for collecting these signatures should be comparatively short (150 to 180 days), and there should be geographic requirements that guarantee that the measure has some support in all regions of the country (the signatures of perhaps three percent of electors in each province should be required).

60 For more details, see Linder, *Swiss Democracy*, pp. 65-68.

61 A proposal along these lines was made by Peter Russell (comments delivered at the conference on "Maturity or Malaise? The Growing Use of Referendums in Liberal-Democratic Societies," held at Queen's University, Kingston, Ontario, May 1999).

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The Perils of Comparison: Addendum to "Electoral Democracy in the Provinces"

Choices Vol. 7, no. 2 (March 2001)
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Matthew Mendelsohn and Andrew Parkin Donald E. Blake

Democracy is a highly cherished value in Canada. Understandably, attempts to measure the quality of democracy invite debate about the definition of democracy and the standards used to assess it. In my contribution to the *Strengthening Canadian Democracy* series, I offered a comparison of the provinces on five dimensions of electoral democracy: equality of representation, the right to vote, the right to be a candidate, party and election finance, and the outcome of elections.[1] Any effort, in a relatively short space, to summarize similarities and differences among the provinces is bound to be selective. A corollary is that those with detailed knowledge of a particular province or region may object to what has been left out or given insufficient attention. Moreover, a ranking exercise, such as the one I used in my study, tends to focus the reader's attention on cases at one extreme or the other. Nova Scotia, in particular, has been singled out for unflattering attention.[2] This addendum is intended to clarify certain aspects of my argument and to correct some errors that, regrettably, affected my treatment of the province.

In my study Nova Scotia was ranked lowest among the 10 provinces on the equality of the electoral map, restrictions on the right to vote, and female representation in the legislature. It tied for lowest score on the right to be a candidate, and limits on political contributions, although it ranked in the middle on other measures of party and election finance.

Unfortunately, the province's rankings on contribution limits and candidacy restrictions contain errors. The rank on political contributions was based on my reading of the Nova Scotia *Elections Act*. The Act contains election finance provisions covering party and candidate spending limits, reimbursement provisions and reporting requirements, but makes no mention of limits on contributions to parties or candidates. However, I have since learned that the *Members and Public Employees Disclosure Act* prohibits anonymous contributions and requires disclosure of any contributions exceeding $50. With this correction, Nova Scotia would move up to join Prince Edward Island, Manitoba, Saskatchewan, and British Columbia, all of which have less stringent requirements than Alberta and New Brunswick. Quebec has the strictest regulations of all.[3]

Restrictions on the right to be a candidate are also not as extensive in Nova Scotia as I originally supposed.[4] The *House of Assembly Act* prohibits the candidacy of provincial employees unless they resign from the public service before seeking a nomination. However, the *Civil Service Act* contradicts this. It contains generous leave of absence provisions for all public employees except those who are "politically restricted", i.e., those employed in a managerial or confidential capacity. An adjustment of Nova Scotia's ranking taking this into account would place Nova Scotia closer to a middle group containing Newfoundland, New Brunswick, and Manitoba but still behind Prince Edward Island, Quebec, Saskatchewan, Alberta and British Columbia.

These adjustments still leave Nova Scotia with more low scores than any other province, but that was never my central point. In my conclusion I pointed out that the quality of democracy in many respects has improved in all provinces, especially in procedures for drawing electoral boundaries and election finance laws. Moreover, as noted in the original article, the ranking of provinces differs depending on what dimension of electoral

democracy is considered. Finally, an ordinal ranking procedure was used to compare provinces on restrictions on the right to vote and be a candidate and on stringency of election finance laws. In other words, they were ranked against each other based on a qualitative assessment, and not against some objective mathematical standard with precise distances between scores.

Moreover, most jurisdictions, including Nova Scotia, continue to make improvements to election law. On April 12, 2001 the province's Minister of Justice introduced amendments to the *Elections Act* that would replace proxy voting with a mail ballot and restore the right to vote to election officials, federally appointed judges, inmates serving sentences of less than two years, and those legally confined to mental institutions. If approved, these changes will move Nova Scotia from last place, in terms of restrictions on the right to vote, to a position closer to the middle.

My study has also been criticized for its treatment of electoral boundary procedures in Nova Scotia and for the low rank assigned to Nova Scotia's electoral map. As noted in the original article, the current Nova Scotia electoral map was generated ad hoc in the sense that the initiative to redraw electoral district boundaries was taken by the government of the day, spurred on, in part, by concern for the constitutionality of existing boundaries,[5] rather than being triggered by a statute specifying a timetable for redistributions. Since then the province's *House of Assembly Act* has been amended to require redistribution every ten years (beginning March 2002). In fact, this was one of the recommendations of the 1992 Electoral Boundaries Commission that produced the current map. However, unlike similar statutes in other jurisdictions, the Nova Scotia Act does not specify any criteria for boundary drawing, such as justifications for departures from equality of district populations, or a percentage limit on departures from equality.[6]

As explained in my article, the classification of Nova Scotia's electoral map as the most unequal in Canada was based on a mathematical measure of inequality, the gini index. The index is accepted by scholarly and legal opinion as a standard test of malapportionment, or the departure from the standard of one person-one vote. As noted, the Nova Scotia Electoral Boundaries Commission produced a much more equal map than the one that preceded it. The gini index dropped from 0.155 to 0.089. However, in accordance with terms of reference given by a Select Committee of the Nova Scotia legislature, the Commission produced a map containing five electoral districts (ten percent of the total) with populations substantially lower than the -25 percent standard used in federal (and several provincial) redistributions. Three of them (Argyle, Clare, and Richmond with deviations of -45.1, -43.9 and -34.7, respectively) contain concentrations of Acadians, one (Preston with a deviation of -49.7) has a significant Black minority, and one (Victoria with a deviation of -48.0) was considered to justify having a lower population because of geographical considerations.[7] As noted in my article, the Supreme Court of Canada has ruled that substantial departures from voter parity can be justified in order to achieve "effective representation." Whether deviations as extreme as those in Nova Scotia (as well as in British Columbia and Quebec) are justifiable is a matter of opinion. There are no established principles for determining which groups justify special consideration or how much inequality is legitimate.[8]

The provinces offer a fascinating laboratory for the study of democracy. Although they share a heritage of parliamentary government and are bound by the *Charter of Rights and Freedoms*, they are free to experiment with arrangements for redrawing constituency boundaries, criteria for the right to vote and be a candidate, and the rules governing parties and election campaigns. Inter-provincial variation has shrunk considerably since the

entrenchment of the Charter in 1982. Canadians will continue to debate, in both judicial and political arenas, the differences that remain. An assessment of differences among provinces, and the justification for them, will be a key feature of this debate.

Notes

1 "Electoral Democracy in the Provinces," *Choices*, Vol. 7, no. 2 (March 2001).

2 See John Ibbitson, "Some voters are more equal than others," *Globe and Mail*, March 30, 2001.

3 Recent amendments to party finance legislation now give Manitoba rules comparable to those in Quebec.

4 I wish to thank Janet Willwerth for pointing out these errors.

5 See Jennifer Smith and Ronald G. Landes, "Entitlement versus Variance Models in the Determination of Canadian Electoral Boundaries," *International Journal of Canadian Studies*, no. 17 (Spring 1998), p. 22.

6 There is one minor exception. As discussed in my original article, Nova Scotia remains committed to adding an additional seat in the House of Assembly for a representative of the Mi'kma. The *House of Assembly Act* contains provision for at least annual meetings of the premier, leader of the opposition and the leader of a "recognized party" with Mi'kma representatives to discuss how to implement this commitment.

7 See Smith and Landes, "Entitlement versus Variance Models" for a detailed account.

8 See David Johnson, "Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems," *McGill Law Journal*, Vol. 39 (1994), pp. 224-47.

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Résumé

Introducing Direct Democracy in Canada
Matthew Mendelsohn and Andrew Parkin

Pendant la campagne électorale de novembre 2000, on a volontiers tourné en ridicule la démocratie directe, du moins dans la forme préconisée par l'Alliance canadienne : c'est-à-dire les référendums organisés à l'initiative de citoyens. Peu d'observateurs, toutefois, ont souligné l'usage de plus en plus fréquent d'une certaine forme de démocratie directe et la faveur dont elle jouit dans l'opinion publique. Au cours des années 1990, en effet, huit référendums ont été organisés au Canada aux niveaux fédéral, provincial ou territorial et, selon de récents sondages, la majorité des Canadiens voient d'un bon œil la tenue de telles consultations.

C'est dans ce contexte que les auteurs du présent essai évaluent les diverses formes de démocratie directe et cherchent à discerner celles qui correspondent le mieux aux valeurs et aux traditions canadiennes. Parmi ces valeurs et traditions figurent la protection des minorités, la recherche de la justice, l'information comme fondement des décisions et l'imputabilité. L'utilisation des référendums, si elle se répand au Canada, devrait viser quatre objectifs : favoriser la recherche de compromis entre des intérêts divergents; susciter un débat public éclairé; élargir la participation des citoyens sans éclipser ni le rôle du Parlement ni celui des partis politiques; enfin, servir véritablement l'intérêt du public et non pas celui des puissants. Comme d'autres analystes, les auteurs écartent certain type d'initiative directe des citoyens, actuellement pratiqué dans plusieurs États des États-Unis (dont la Californie); ils y voient, entre autres inconvénients, celui de n'accroître en rien le pouvoir de l'électeur ordinaire. Mais les auteurs, passant en revue d'autres formes de démocratie directe (dont plusieurs actuellement en usage hors des États-Unis), montrent l'existence de solutions plus intéressantes.

À partir de leur analyse des différentes options qui s'offrent, les auteurs soumettent trois recommandations. Premièrement, tout référendum destiné à faire ratifier des amendements à la Constitution doit être précédé d'un forum quelconque (assemblée de citoyens), qui confère aux citoyens un rôle véritable dans l'établissement des priorités et dans la définition des options sur lesquelles ils seront appelés à se prononcer. Deuxièmement, sur des questions extérieures à la Constitution, les gouvernements ne devraient utiliser le procédé référendaire que pour trancher entre diverses façons de résoudre tel ou tel problème – et non pas pour faire simplement ratifier des mesures déjà décidées. Troisièmement, on devrait adopter au Canada la forme « indirecte » du référendum organisé à l'initiative de citoyens. Car cette forme fournit aux gouvernements l'occasion de tenir des audiences publiques sur les propositions soumises, de bonifier celles-ci et même de les exprimer dans un projet de loi — tout cela avant de passer au vote. Cette initiative indirecte, moins pressée de rallier une majorité, est plus propice à un débat de fond que ne l'est l'initiative directe. Elle fournit aux citoyens un moyen d'intervenir plus directement dans les affaires publiques sans en évincer les partis politiques et le Parlement.

Enfin, les auteurs soulignent l'importance des règles qui doivent baliser la tenue de référendums : accès aux médias, règlements concernant les dépenses permises au cours de la campagne, distribution régionale de la majorité requise pour l'application des mesures votées, etc. En conclusion, les auteurs estiment que l'instauration de mesures de démocratie directe adaptées au contexte canadien et assorties d'une réglementation adéquate serait de nature à rehausser la qualité de la vie démocratique dans notre pays.

Summary

Introducing Direct Democracy in Canada

Matthew Mendelsohn and Andrew Parkin

Direct democracy – at least in the form of the Canadian Alliance's proposal for citizen-initiated referendums – was widely ridiculed during the November 2000 election campaign. Yet few of the critics noted the growing use of, and strong public support for, some form of direct democracy in Canada. No less than eight referendums were held at either the federal, provincial or territorial level in the 1990s, and surveys currently show that a majority of Canadians think referendums are a good idea.

Against this background, the authors assess the merits of direct democracy and identify those types of direct democracy that are most compatible with the best values and traditions of Canadian democracy. These values and traditions include protections for minorities and the promotion of fairness, informed decision-making and political accountability. If referendums are to become more common in Canada, they should be used in a way that encourages compromise between different interests, promotes thoughtful public debate, enhances citizen participation without eclipsing parliament and political parties, and genuinely serves the public interest rather than the interest of those who are already the most powerful. The authors agree with those who argue that the direct citizens' initiative as currently employed in a number of US states, including California, should not be imported into Canada. Among other flaws, the California-style initiative fails to deliver on its promise to empower ordinary voters. But the authors' review of other forms of direct democracy, including many currently in use outside the US, shows that more attractive alternatives exist.

Based on their analysis of the different options available, the authors advance three recommendations: (1) when referendums are used to ratify constitutional amendments, they should be preceded by mechanisms such as a people's convention that give citizens a role in setting the agenda for constitutional reform and in defining the options upon which they will be called to vote; (2) governments should use referendums to consult voters on non-constitutional issues, but only if they are genuinely uncertain about how to proceed on a given issue and are not merely seeking popular ratification of a course of action to which they are already committed; (3) the "indirect" form of the citizen-initiated referendum should be adopted in Canada. The indirect initiative provides governments with an opportunity to hold public hearings on citizens' proposals, to amend them, and even to write the enabling legislation that gives substance to them – all before they are put to a vote. As a result, the indirect initiative is a less majoritarian and more deliberative mechanism than the direct initiative. It provides the public with a means for engaging more directly with their government, without removing parties and parliament from the process.

Finally, the authors emphasize the importance of the rules that govern the conduct of referendums, including regulations pertaining to campaign spending, access to the media, and the regional distribution of the majority required for a referendum to carry. The authors conclude that the introduction of appropriate forms of direct democracy, in combination with the adoption of the necessary regulations, would improve the quality of Canada's democracy.